Supreme Court, U.S.
FILED

(1) 932082 JUN 27 1994

OFFICE OF THE CLERK

No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ASSOCIATION OF CHRISTIAN ACADEMIES AND COLLEGES OF PUERTO RICO, ET AL.
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO, DEPARTMENT OF EDUCATION, ET AL.
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

PETITION FOR WRIT OF CERTIORARI

Alexis I. Crow
Counsel of Record
Anne-Marie Amiel
THE RUTHERFORD INSTITUTE
1445 E. Rio Road
Charlottesville, VA 22901
(804) 978-3888

Lcdo. Edric E. Vivoni Farage
HC 01 Box 3933
Adjuntas, Puerto Rico 00601
(809) 829-9095

June 28, 1994

Balmar Legal Publishing Services, Washington, D.C. (202) 682-9800

92 pp

QUESTIONS PRESENTED

1. WHETHER THE RELIGIOUS FREEDOM RESTORATION ACT OF 1993 PROHIBITS PROCEDURAL REQUIREMENTS OF A PUERTO RICO SCHOOL LICENSING SCHEME THAT DO NOT REPRESENT THE LEAST RESTRICTIVE MEANS OF FURTHERING THE STATE'S ALLEGED COMPELLING INTEREST AND IMPOSE A SUBSTANTIAL BURDEN ON THE RELIGIOUS BELIEFS OF PARENTS AND ADMINISTRATORS OF PRIVATE RELIGIOUS SCHOOLS.

2. WHETHER THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION PROHIBIT THE PROCEDURAL REQUIREMENTS OF A PUERTO RICO SCHOOL LICENSING SCHEME THAT INFRINGE UPON THE FUNDAMENTAL RIGHT OF PARENTS TO DIRECT THE EDUCATION OF THEIR CHILDREN.

3. WHETHER THE EXPRESS PROVISIONS OF THE CONSTITUTION OF PUERTO RICO THAT REQUIRE COMPLETE SEPARATION OF CHURCH AND STATE PROHIBIT PROCEDURAL REQUIREMENTS OF A PUERTO RICO SCHOOL LICENSING SCHEME THAT EXCESSIVELY ENTANGLE PRIVATE RELIGIOUS SCHOOLS WITH STATE GOVERNMENTAL BUREAUCRACY.

4. WHETHER THE SUPREME COURT OF PUERTO RICO ERRED IN CONSIDERING AND INCORPORATING INTO ITS DECISION PORTIONS OF A DOCUMENT WRITTEN BY RESPONDENT GENERAL COUNCIL OF EDUCATION THAT HAD NOT BEEN MADE AVAILABLE TO PETITIONERS.

LIST OF PARTIES

The parties to the Commonwealth of Puerto Rico General Court of Justice Superior Court San Juan Part and the Supreme Court of Puerto Rico proceedings were the Petitioners, Asociacion de Academias y Colegios Christianos de Puerto Rico and its member schools, and the Respondents Estado Libre Asociado de Puerto Rico, Departamento de Educacion, Departamento de Justicia, Universidad de Puerto Rico and Departamento de Instruccion de Puerto Rico.

TABLE OF CONTENTS

	PAGES
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	v
OPINIONS	1
JURISDICTION	2
STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
I. THE RELIGIOUS FREEDOM RESTORATION ACT OF 1993 PROHIBITS PROCEDURAL REQUIREMENTS OF A PUERTO RICO SCHOOL LICENSING SCHEME THAT DO NOT REPRESENT THE LEAST RESTRICTIVE MEANS OF FURTHERING THE STATE'S ALLEGED COMPELLING INTEREST AND THAT IMPOSE A SUBSTANTIAL BURDEN ON THE RELIGIOUS BELIEFS OF PARENTS AND ADMINISTRATORS INVOLVED IN A PRIVATE RELIGIOUS SCHOOL . .	5

II. THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION PROHIBIT THE PROCEDURAL REQUIREMENTS OF A PUERTO RICO SCHOOL LICENSING SCHEME THAT INFRINGE UPON THE FUNDAMENTAL RIGHT OF PARENTS TO DIRECT THE EDUCATION OF THEIR CHILDREN 9

III. THE EXPRESS PROVISIONS OF THE CONSTITUTION OF PUERTO RICO THAT REQUIRE COMPLETE SEPARATION OF CHURCH AND STATE PROHIBIT PROCEDURAL REQUIREMENTS OF A PUERTO RICO SCHOOL LICENSING SCHEME THAT ENTANGLE PRIVATE RELIGIOUS SCHOOLS WITH STATE GOVERNMENTAL BUREAUCRACY 11

IV. THE SUPREME COURT OF PUERTO RICO ERRED IN CONSIDERING AND INCORPORATING INTO ITS DECISION PORTIONS OF A DOCUMENT WRITTEN BY RESPONDENT GENERAL COUNCIL OF EDUCATION THAT HAD NOT BEEN MADE AVAILABLE TO PETITIONERS 12

CONCLUSION 13

TABLE OF AUTHORITIES

CASES	PAGES
Church of Lukumi Babalu Aye, Inc., et al. v. City of Hialeah, 508 U.S. ___, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993)	4
Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990)	4, 7, 10
Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923)	9, 10
Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925)	9, 10, 11
Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963)	5, 6
State of Ohio v. Whisner, 470 Ohio St.2d 181, 351 N.E.2d 750 (1976)	11
Thomas v. Collins, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430 (1945)	6
Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972)	5, 7-8
STATUTES AND CONSTITUTIONAL PROVISIONS	
42 U.S.C. § 2000bb	2-3, 5
Puerto Rico Constitution, Article II, Section 3	2, 11
United States Constitution, Amendment I	2, 9
United States Constitution, Amendment XIV	2, 9

No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ASSOCIATION OF CHRISTIAN ACADEMIES
AND COLLEGES OF PUERTO RICO, ET AL.

Petitioners,

v.

COMMONWEALTH OF PUERTO RICO, DEPARTMENT
OF EDUCATION, ET AL.

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PUERTO RICO

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of The Supreme Court of Puerto Rico in this case.

OPINIONS BELOW

Certified translations of orders, judgments and opinions of the Commonwealth of Puerto Rico General Court of Justice Superior Court San Juan Part and the Supreme Court of Puerto Rico have previously been appended to Petitioners' Application to Stay Mandate of the Supreme Court of Puerto Rico Pending Certiorari, denied June 20, 1994. Translations of the opinions and orders of the Commonwealth of Puerto Rico General Court of Justice Superior Court San Juan and the Supreme Court of

Puerto Rico are unreported and appear in Appendices A through I.

JURISDICTION

This case seeks review of a decision of the Puerto Rico Supreme Court entered on March 30, 1994. This is a civil case.

Jurisdiction for review of this matter by certiorari is conferred on this Court by 28 U.S.C. § 1258.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . .

United States Constitution, Amendment XIV

> [N]or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Puerto Rico Constitution, Article II, Section 3

No law whatsoever will be enacted regarding the establishment of any religion nor will the free exercise of a religious cult be forbidden. There will be complete separation of church and the state.

42 U.S.C. § 2000bb

Section 3 of the Religious Freedom Restoration Act of 1993 provides in part:

> (a) IN GENERAL. — Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) EXCEPTION. — Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person —

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

STATEMENT OF THE CASE

Petitioners filed suit in the Superior Court of Puerto Rico San Juan Part in 1991 after a decision by the University of Puerto Rico that students seeking adm ssion to the University who had not graduated from a state licensed school would no longer be accepted as of the academic year 1991-92, and upon the decision of the Department of Education to compel Petitioner Association of Christian Academies and Colleges to comply with the licensing requirements or close their member schools.

Petitioners argued that the licensing procedure, as set forth in Law. No. 31 (18 L.P.R.A. Sec. 2101, *et seq.*), as amended by Law No. 68 (L3 L.P.R.A. Sec. 397-397J), was in direct conflict with the religious beliefs of Petitioners' member schools, and that all health and safety requirements under the law were being met by Petitioners' member schools without the need for a license. Petitioners argued that the licensing procedure involves an excessive and unconstitutional intrusion into the affairs of Petitioners' member schools.

In June 1991, the Superior Court ordered division of argument on the suit instituted by the students seeking admission to the University and that of the Association of schools. On June 25, 1991, the Superior Court entered a partial judgment declaring unconstitutional the admission requirements of the University of Puerto Rico (Appendix A below). The Court held that the admission requirements violated the principle of equal treat-

ment of students followed by the great majority of states within the United States and was arbitrary. Respondents timely filed an appeal to the Supreme Court of Puerto Rico.

On June 12, 1992, the Superior Court held that the Petitioner Association of Christian Academies and Colleges had failed to exhaust all administrative remedies, and ordered that the Director of the General Council of Education determine the application of Law. No. 68 to private school students (Appendix B below). On July 10, 1992, the General Council of Education issued a decision that the regulations did not substantially burden the free exercise of religion in that they were merely designed to ensure a safe and healthy environment in which to ensure the best development of the teaching and learning process (Appendix D below). Petitioners timely filed an appeal to the Supreme Court of Puerto Rico.

On July 30, 1992 the appeals of Respondents and Petitioners were consolidated by the Supreme Court of Puerto Rico (Appendix E below). On February 22, 1994, the Supreme Court reversed the judgment of the Superior Court as to the constitutionality of Law No. 31 (as amended by Law. No. 68) in respect of admission requirements to the University of Puerto Rico, and affirmed the decision of the General Council of Education (Appendix F below). The Supreme Court, citing *Church of Lukumi Babalu Aye, Inc., et al. v. City of Hialeah*, 508 U.S. ___, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) and *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), held that a neutral and generally applicable regulation does not have to be justified by a compelling interest of the state where it has only an incidental effect upon a particular religious practice. The Supreme Court of Puerto Rico further held that the admission requirements for the University of Puerto Rico provided equal protection under the law, as against equal treatment, for all applicants to the University.

On March 30, 1994, Petitioners' motion for reconsideration, requesting consideration of the relevance of the Religious Freedom Restoration Act to the present case, was denied by the Supreme Court of Puerto Rico (Appendix G below). On June 3, 1994, the Supreme Court of Puerto Rico denied Petitioners' motion for a stay of mandate to prevent irreparable harm being caused to the private school system in Puerto Rico by forcible closures of religious schools pending appeal to the United States Supreme Court (Appendix H below).

The Superior Court of Puerto Rico San Juan Part issued an order closing the religious schools on June 13, 1994 (Appendix I below). Petitioners' application to the United States Supreme Court for a stay of mandate was denied by Justice Souter on June 20, 1994.

REASONS FOR GRANTING THE WRIT

I. THE RELIGIOUS FREEDOM RESTORATION ACT OF 1993 PROHIBITS PROCEDURAL REQUIREMENTS OF A PUERTO RICO SCHOOL LICENSING SCHEME THAT DO NOT REPRESENT THE LEAST RESTRICTIVE MEANS OF FURTHERING THE STATE'S ALLEGED COMPELLING INTEREST AND THAT IMPOSE A SUBSTANTIAL BURDEN ON THE RELIGIOUS BELIEFS OF PARENTS AND ADMINISTRATORS INVOLVED IN A PRIVATE RELIGIOUS SCHOOL.

The Religious Freedom Restoration Act, signed into law by President Clinton on November 16, 1993, was enacted with the purpose of "restor[ing] the compelling interest test as set forth in Sherbert v. Verner. . . and Wisconsin v. Yoder. . . and to guarantee its application in all cases where free exercise of religion is substantially burdened."

In *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963), this Court stated that the ruling of the Supreme Court of South Carolina that the plaintiff, a Seventh-Day Adventist, was ineligible for unemployment compensation because she refused to work on her Sabbath:

> [F]orces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.

Id. at 404.

In the instant case, by forcing Petitioners and the parents of children attending Petitioners' member schools to choose between complying with a law requiring extensive bureaucratic licensing procedures and the tenets of their faith, the Puerto Rican authorities are imposing the same kind of burden as did South Carolina in the *Sherbert* case.

In *Sherbert*, this Court further found that "no showing merely of a rational relationship to some colorable state interest would suffice" to justify a "substantial infringement of . . . First Amendment right[s]." (*Id.* at 406). Citing *Thomas v. Collins*, 323 U.S. 516 at 530 (1945) the Court held that "in this highly sensitive area, '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation'." (*Id.* at 406). In the instant case, however, the Supreme Court of Puerto Rico, in reversing the decision of the lower court, held that rational scrutiny of the governmental requirements imposed upon Petitioners was all that was required (Appendix F, page 16 below). We respectfully suggest that the test as set forth in *Sherbert* is the proper test to be applied in the instant case.

In its February 22, 1994 decision, the Supreme Court of Puerto Rico followed the rule set forth in *Employment Div., Dept. of Human Resources of Oregon v. Smith*, holding that a neutral and generally applicable regulation does not have to be justified by a compelling interest of the State where it has only an incidental effect upon a particular religious practice. In this the Puerto Rico court misapplied this Court's decision in *Smith*, since the right of parents to direct the education of their children is one of the specific instances cited by this Court as an example of a hybrid claim where First Amendment rights supersede the state's desire to impose the requirements of a neutral, generally applicable law to religious institutions (*Smith*, 494 U.S. 872, 881-82 (1990)).

Even were this not the case, Section 2(4) of the Religious Freedom Restoration Act specifically addressed the *Smith* case as one of the reasons requiring the passage of the legislation, in that *Smith* "virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion." Petitioners requested, in their March 30, 1994 motion for reconsideration, that the Supreme Court of Puerto Rico reconsider its ruling in light of the provisions of the Religious Freedom Restoration Act. That motion was denied.

In *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), the religious beliefs of Amish parents required them to keep their children at home in order to teach them practical skills necessary to their future within the Amish community. This Court held that the state may not interfere with the First Amendment freedoms of parents unless there is "harm to the physical or mental health of the child or to the public safety, peace, order, or welfare." (*Id.* at 230).

Great weight was given by this Court to the religious nature of the parents' claims in *Yoder*, as against a claim based on secular or personal beliefs (*Id.* at 216). The Court stated that, when the parents' interests are combined with a free exercise

claim such as those of the Amish parents, more than merely a "reasonable relation to some purpose within the competency of the State" is required to sustain the state's argument (*Id.* at 233). What is required is a finding "that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause." (*Id.* at 214). Further, even if the state can establish the requisite degree of interest, it must also demonstrate that such interest cannot otherwise be served before the state's interest can override the free exercise claim (*Id.* at 215). This, in essence, is the import of Section 3 of the Religious Freedom Restoration Act of 1993, which provides that government may only substantially burden the exercise of religious beliefs where there is a demonstrated state compelling interest *and* that there are no less restrictive means of furthering that interest.

In the instant case, there are less restrictive means of serving the state's interest in ensuring a safe, healthy, and effective learning environment for all students without infringing upon the constitutionally protected free exercise rights of Petitioners.

It is undisputed that Petitioners' member schools have complied with the substance of the law. Respondents state the *substantive* compliance is insufficient; that compliance with the *form* of the law is also required.

With respect to the state's interest in academic achievement, Petitioners argue that Letters of Compliance from the General Council of Education and the use of the College Board Entrance Exam or Free Election Exam results as a test of academic suitability for entrance to the University of Puerto Rico would achieve the stated objectives of Respondents to "guarantee to the students and their parents that there is a proper environment for the best development of the teaching and learning process. . . " (Appendix D, page 3 below).

The state's interest in the safety and health of educational establishments has already been achieved in that the Fire Department, Health Department, and department responsible for the oversight of compliance with the local building codes have all issued Certificates of Compliance to Petitioners' members schools. Petitioners argue that such Certificates could be used as a basis for the issuance of Letters of Compliance by the General Council of Education.

II. THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION PROHIBIT THE PROCEDURAL REQUIREMENTS OF A PUERTO RICO SCHOOL LICENSING SCHEME THAT INFRINGE UPON THE FUNDAMENTAL RIGHT OF PARENTS TO DIRECT THE EDUCATION OF THEIR CHILDREN.

In 1923, this Court established that the liberty protected by the Fourteenth Amendment Due Process Clause includes "the right of the individual to . . . establish a home and bring up children." (*Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). The Court struck down a state law which prohibited foreign language instruction to children, rejecting the state claim that patriotism and good citizenship would be advanced by ensuring that English would be the first language of all children raised in that state.

In *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), this Court again struck down a state law relating to education. At issue was an Oregon compulsory education law which, in effect, required attendance of all children between the ages of eight and 16 at public schools. The Court stated:

> The fundamental theory of liberty upon which all governments of this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers

> only. *The child is not the mere creature of the State*; those who nurture him and direct his destiny have the right coupled with the high duty, to recognize and prepare him for additional obligations.

Id. at 535 (emphasis added).

The Court cited its earlier decision in *Meyer* in stating that "the parental right to guide one's child intellectually and religiously is a most substantial part of the liberty and freedom of the parent." (*Meyer*, 262 U.S. 390 at 399-400) The Court struck down the statute at issue in the case, stating that the statute "forbids them [parents], as a body, to support private and parochial schools and thus give to their children such education and religious training as the parents may see fit." (*Id.* at 519). As noted above, recognition of this pivotal right of parents was further made by this Court in *Employment Div., Dept. of Human Resources of Oregon v. Smith*, when it held that a First Amendment claim of free exercise of religion, coupled with a claim of constitutionally protected parents rights, "bars application of a neutral, generally applicable law to religiously motivated action. . . " (*Smith*, 494 U.S. 872, 881 (1990)).

Meyer, Pierce and *Smith* were all cited by the Supreme Court of Puerto Rico in its February 22, 1994 decision. However, they were cited for the proposition that "the State has a preeminent interest in education," (Appendix F, page 12 below) and thus this Court's decisions in all three cases were misapplied by the Supreme Court of Puerto Rico.

In the instant case, the effect of permitting the provisions of Law No. 31, as amended by Law No. 68, to stand would be to force the religious schools, and those parents who choose to send their children to such schools, to choose between compromising their religious principles or to comply with a formal licensing application procedure that achieves nothing beyond that which a less restrictive procedure could achieve in ensuring

a safe and proper learning environment for all Puerto Rican children.

As the schools and the parents have thus far refused to sacrifice their religious principles in this manner, the only option which remains for Petitioners is to close the member schools, thus depriving the parents of the constitutionally protected right of choice in education. As in *Pierce*, enforcement of the Puerto Rico law would result in parents being forced to place their children in the public school system.

In *State of Ohio v. Whisner*, 470 Ohio St.2d 181, 351 N.E.2d 750 (1976), the Ohio Supreme Court held that the State Board of Education's minimum standards relating to the operation of schools infringed upon the First Amendment free exercise rights of parents of students attending a nonpublic, religious school. In a case with direct relevance to the instant case, the court found that the state minimum standards were so comprehensive in scope and effect as to eradicate the distinction between public and nonpublic education, and application of those minimum standards to parents of children attending the religious school abrogated their fundamental freedom, protected by the Fourteenth Amendment, to direct the upbringing and education, secular or religious, of their children.

III. THE EXPRESS PROVISIONS OF THE CONSTITUTION OF PUERTO RICO THAT REQUIRE COMPLETE SEPARATION OF CHURCH AND STATE PROHIBIT PROCEDURAL REQUIREMENTS OF A PUERTO RICO SCHOOL LICENSING SCHEME THAT ENTANGLE PRIVATE RELIGIOUS SCHOOLS WITH STATE GOVERNMENTAL BUREAUCRACY.

Article II, Section 3 of the Puerto Rico Constitution provides that "[t]here will be complete separation of church and the state." By mandating compliance by Petitioners with the provi-

sions of Law No. 68, against Petitioners religious beliefs, the Puerto Rican authorities are violating the constitutional rights of citizens of Puerto Rico and excessively entangling the state with religion.

IV. THE SUPREME COURT OF PUERTO RICO ERRED IN CONSIDERING AND INCORPORATING INTO ITS DECISION PORTIONS OF A DOCUMENT WRITTEN BY RESPONDENT GENERAL COUNCIL OF EDUCATION THAT HAD NOT BEEN MADE AVAILABLE TO PETITIONERS.

In its February 22, 1994 decision, the Supreme Court of Puerto Rico stated:

> The educational philosophy, of a humanistic or another nature, that Law 68 may promote is applicable to public schools, not to private schools. The latter are free to adopt whatever philosophical orientation best fits their particular mission.

Appendix F, page 14 below).

It was brought to the attention of Petitioners on June 13, 1994 that this statement is a quote from a position paper of the General Council of Education approved by the Council on November 20, 1992 and never made available to Petitioners. A certified translation of the position paper is appended below at Appendix J.

There are many statements and legal opinions expressed in this document with which Petitioners take issue. We respectfully suggest that the Supreme Court of Puerto Rico erred in including this document in their consideration of the merits of the case, without first ensuring that Petitioners had an opportunity to view and respond to the opinion of the General Council of Education.

CONCLUSION

The claim of the Petitioners is based on sincerely held religious beliefs, which are rights protected under both the United States Constitution and the Puerto Rico Constitution. The practical effect of the ruling of the Supreme Court of Puerto Rico will be to deny Puerto Ricans the right to send their children to religious schools and to end a longstanding tradition of such schools in the Commonwealth of Puerto Rico. It is in order to uphold the religious rights of Petitioners and all those parents who wish to educate their children in schools other than the public schools that we respectfully request this Court to grant the petition for writ of certiorari.

Respectfully submitted,

Alexis I. Crow
Counsel of Record
Anne-Marie Amiel
THE RUTHERFORD INSTITUTE
1445 E. Rio Road
Charlottesville, VA 22901
(804) 978-3888

June 28, 1994

A1

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN SECTION

ASSOCIATION OF CHRISTIAN ACADEMIES AND SCHOOLS OF PUERTO RICO, ETC.

Plaintiffs

vs.

COMMONWEALTH OF PUERTO RICO, ETC.

Defendants

CIVIL NO.: K PE 91-0734 (904)

ON: INJUNCTION

PARTIAL JUDGMENT

I

On 29 January 1991 the president of the University of Puerto Rico, Dr. José M. Saldaña, communicated by letter to Rev. Ricardo Perez-Torres, Director of the Yauco Baptist School, that beginning with school year 1991-92 the U.P.R. "will not process applications for admission from students coming from schools that have not obtained the license from the Department of Education, as required by Law No. 31 of 10 May 1976, as amended (18 L.P.R.A. Sec. 2101, *et seq.*)." The Yauco Baptist School is one of the schools that do not have the aforesaid license.[1] In the letter President Saldaña acknowledges that the university that he directs is not "subject to the legal prohibition on recognizing diplomas granted by educational institutions that do not possess the license from the Department of Education."[2]

---

[1] None of the twelve plaintiff schools possess said license.

[2] President Saldaña bases that assertion on his interpretation of the provisions of Article 7 of Law No. 31 of 10 May 1976 (18 L.P.R.A. Section 2107). However, at the hearing held to determine the propriety of a preliminary injunction, both the legal counsel for the UPR itself and the Executive

Nevertheless, he indicates that the University has decided to demand this requisite for graduating applicants because thus "compliance with a series of minimal requirements is guaranteed." *(See Defendant's Annex XIV).*

Students Ricardo Pérez-Rodríguez; Darwin Caraballo-Burgos; Osvaldo Irizarry-Sánchez; Richard Ramos-Irizarry; Migdalia Ortiz-Luna; Michele Ruiz-Jorge; and Mytsi J. Acosta-Vázquez applied for admission at the UPR for school year 1991-92. The first four are graduates of the Yauco Baptist School; the next two of the Mayagüez Baptist Academy; and the remaining one from the Mayagüez Christian School. The Director of the Office of Academic Affairs of the Central Administration of the UPR, Pedro A. Hernández-López, notified them through respective letters dated the 1st. of May 1991 that [the UPR] had been unable to make a final decision about their applications for admission because the school that each of them attended does not have the license to operate from the Department of Education. Hernández-López points out to them that according to the *Instructions Manual and Application for Admission, 1991*, to request admission to the UPR it is a requirement to be a graduate of a school authorized to operate in Puerto Rico by the Department of Education. Since the schools that they attended do not have the license of the Dept. of Ed. their applications will be held "in abeyance and if by the beginning of the 1991-92 academic semester the institution complies with this requirement, we will proceed to complete the evaluation of your application and we will communicate to you our final decision about your admission," since that "is the only existing obstacle to be able to complete the evaluation" of the applications.[3] (*See Defendant's Annex XVII*).

Secretary of the CHE were of the opinion that President Saldaña is mistaken in his interpretation. They both hold that the concept of public instrumentality mentioned in the cited article includes public corporations such as the UPR.

[3] At the hearing on preliminary injunction the attorney for the President of the University informed that there is a reserved space for these students and that their admission has only been postponed until their school complies

On 17 May 1991 the Association of Christian Academies and Schools of Puerto Rico, the Pastors of each of the churches that make up the Association, and the parents of the aforesaid students (*pro se* and on behalf of their children) filed a judicial action against the Commonwealth of Puerto Rico, the Department of Education, the Department of Justice and against the University of Puerto Rico. The complaint was split into two claims. One, from the Association of Christian Academies and Schools of Puerto Rico and its twelve elementary and secondary education centers against the State, in relation to the license requirement demanded by Law No. 31, *supra*, and the other, from the students against the UPR because their admission to said higher education center was denied although they had complied with the admission requirements for the aforesaid center (College Board) for the reason previously stated, that is, that the schools they attended are not accredited by the Dept. of Ed. It is this second one to which this judgment is addressed.[4]

---

with the accreditation requirement. However, it is our opinion that it is not in the hands of these students that the schools they attended comply with such requirement of law.

[4] Through an order issued on the 12th. of the running month and year we provided to entertain and consider the students' claim through Rule 57 of Civil Procedure.

The plaintiff students were exempted from the requirement of exhausting the administrative remedies available before the Council on Higher Education because of the advanced stage of the process of integration of new students (preppies) to the university life. On the 14th. of the running month and year the process of delivery of the medical and immunizations certificates at the Medical Services Department of the Rio Piedras Campus took place. The period of orientation and taking of photographs, delivery of the identification card and payment of enrollment fees is scheduled for the 16th. and 18th. of July next. To require them to have to exhaust this administrative proceedings would expose them to irreparable harm. In addition, the controversy brought forth by the students is purely of law. for the resolution of which the expertise of said administrative organism is not necessary. *Section 4.3 of the Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.*

II

The gist of the matter before us in this action is the legality of the admission requirement imposed by the UPR. The same establishes that all students applying for admission to it must have graduated from a school accredited and authorized to operate in Puerto Rico by the Dept. of Ed. or through an equivalency test of the Dept. of Ed. That is the only controversy — one purely of law.

This requirement for admission to the UPR appears in the *Instructions Manual and Application for Admission* for the year 1991 in the part titled "Requirements to request admission to the University of Puerto Rico." It also appears in the version of that document for the year 1990. It must be highlighted that this document contains the application for admission to the UPR, which is standard. In other words, it is one single application that is completed regardless of which is the academic unit to which admission is sought, that is, that the requirements that appear in said application are of general applicability to all academic units of the UPR system.

It being so, for the aforesaid admission requirements to be valid, the same must comply with the applicable rules of regulations and laws. The General Regulation of the University of Puerto Rico in its Article 14, titled "The President of the University," provides in its Section 14.10 that it is the President who will prepare the regulations of general applicability, which he will submit to the Council on Higher Education (CHE) for their approval. Section 14.10.2 specifically provides that one of these are the "general standards for admission of students into the system."

For the regulations of general applicability promulgated by the President to be valid, it is necessary that the same be

---

As to the other claim, the same would be aired as a petition for declaratory judgment as long as the petitioners are relieved from having to exhaust the administrative proceedings.

approved by the CHE in their turn. This is so by express mandate of the *Law on the University, Law No. 1 of 20 January 1966* (18 L.P.R. A. Sections 601 *et seq.*). Said Law, in its Article 3, subparagraph (3), number (5) establishes as a "*non-delegable duty and attribution of the Council* "To approve the General Regulation of the University, the General Regulation on Students, the Regulation on Students of each campus, the one on retirement and *any other regulation of general applicability.*" (18 L.P.R.A. Section 602 (e)(5), underline ours).

In CHE Certification No. 116, year 1978-79, it is recorded that said organism approved the establishment of one single admission form for the UPR system. As a result of the same, in the year 1981 the Admissions Office of the Central Administration of the UPR was established. From the aforesaid certification arise the admission requirements for the UPR system, except the requirement at controversy in the instant recourse. The CHE understands that since that requirement arises from a law, it is not necessary that any certification whatsoever be promulgated to amend Certification No. 116. It is right.

Article II-14 of Law No. 31, *supra*, as amended by Law No. 49 of 30 June 1988, provides that any natural or juridical person who operates a private educational institution without the due license shall incur in a misdemeanor. If the institution insists on operating without a license after having been warned about the particular by the Secretary of Public Education, the latter may resort in such a situation to the courts, to obtain an order on injunction against said institution *(18 L.P.R.A. Sec. 2124).*

III

The procedural validity of the requirements for admission to the UPR having been duly established, now come into play the plaintiffs' allegations in the sense that the requirement at issue — to be a graduate of a school with a license from the Dept.

of Ed. — is contrary to the Constitution because it violates the standard of equal protection of the laws and the constitutional right to education. The students hold that this requirement is not demanded from foreign students who apply for admission nor from those who take the equivalency test administered by the Dept. of Ed. The Court adds that the requirement, if sustained, also shuts the doors of the University to self-taught individuals who apply for admission.[5] In other words, that said requirement, because it is discriminating and unreasonable, also violates the constitutional guarantee on equal protection of the laws and attempts against their constitutional right to education consecrated in Section 5 of Article II of our Constitution.

IV

The constitutional clause that guarantees equal protection of the laws does not demand equal treatment of all citizens; it only forbids unequal and unjustified treatment. A classification is valid unless it is clearly arbitrary and no rational link whatsoever can be established between the same and a legitimate interest of the State. *Mercado-Vega v. UPR*, 91 JTS 41, p. 8549 and cases and authors cited therein.

The requirement at issue has to do with a fundamental constitutional right: the right to education. *Section 5, Article II, Constitution of the Commonwealth of Puerto Rico.* It has been recognized in our jurisdiction that the right to education protects the right to obtain a college education in the State's University. *Pagán-Hernández v. UPR*, 107 DPR 720, 749 (1978), In that same case it was also recognized that a student of a public

---

[5] The free examinations for a high school equivalency diploma offered by the Dept. of Ed. as authorized by Law No. 188 of 2 May 1952 have one limitation. The applicant must be 18 years old or older (18 L.P.R.A. Sec. 47).

The plaintiff students allege that the Secretary of the Dept. of Ed. also requires that the applicant have been out of school for a period of six months. We note, however, that through Law 67 of 13 June 1977 the requirement that the examinee must had been out of school for one (1) year was eliminated.

university has the right to the protection of the constitutional clauses on the due process of law and equal protection of the laws, page 741. Since it has to do with a regulation that affects a fundamental constitutional right, the same is subject to a strict judicial scrutiny. *Zachry International v. Superior Court*, 104 DPR 267, 277 (1975). This means that in order to further its purpose, the State must utilize the regulation that least hurts the right to be regulated, that is, it must choose the least onerous means for the citizen. The State's interest must be of a higher hierarchy and the regulation must necessarily promote the consecution of said interest. *Zachry*, p. 278.

The regulation that the institution establishes over the students' right to admission must be reasonable and it must avoid discrimination. In the selection of students for admission to the University the principles of merit, fitness and equal treatment must govern. In relation to admission of students coming from the United States, we see that this last criteria is not complied with, specifically as to the requirement challenged herein. According to a report of the Department of Education of the federal government titled "Private School Governance Information," U.S. Department of Education Executive Assistant to the Secretary Office of Private Education, in the year 1981 only four states of that country mandatorily required private schools to have a state license. Nine states had the requirement for a state license in a voluntary manner (in some of them this requirement was not applicable to religious schools). Finally, thirty-seven states did not require private schools to have a state license.

It arises from the same document that twenty-eight states required accreditation programs in a voluntary manner and only five required them mandatorily. Of these, only three required them for non-religious schools. A third category called approval programs was required mandatorily and/or voluntarily by thirty-two states.

The report compiles the results of a questionnaire made in the fifty states and points out that apparently those responding to the same utilized the concepts of approval, licensing and recognition interchangeably, as far as the states' inherence is concerned.

Pertaining to students from other countries, they are only required to show proof that the school they attended has the government's authorization or accreditation. In any event, the University does not inquire about the demands or requirements imposed by the government in question nor the states in order to grant official recognition to the school.

Having taken the foregoing into account about the situation of Puerto Rican students vis-á-vis that of foreign students (whether coming from the United States or from another country), it is necessary to conclude that a more rigorous criterion is applied to ours than to foreign students. No reason whatsoever has been pointed out to us to justify this unequal treatment.

Even utilizing the criterion most favorable to the State, the one about the rational link, the invalidity of said requirement is imminent. The same is clearly arbitrary. The attorneys for the University and for the State have not been able to even suggest what is the rational link to justify the unequal treatment.

V

The plaintiff students also invoke their constitutional right to education under Sec. 5 of the Bill of Rights of the Constitution of the Commonwealth of Puerto Rico, which provides:

> "Every person has the right to an education that promotes the full development of his/her personality and the strengthening of respect for man's rights and the fundamental liberties..."

"Among the new rights that in the 20th. Century are a fundamental part of democratic liberalism, the one to obtain

education is consubstantially equivalent to freedom, which is not merely the absence of external restrictions but the positive manifestation of human potentials. Education is the culture of personality to express from it the most human aspect in its best possible realization." Muñoz-Amato, *The right to education and academic freedom*, 24 P.R. Bar Assoc. L. Rev., 463, 468 (1964).

To hold back from these students, for the alluded reason, the right to educate themselves is an attempt against their constitutional right to education and against the university's institutional order. To those effects we refer to what is set forth in Article 2 of the Law on the University (18 L.P.R.A. Section 601), sub-paragraphs (4) and (6) of the University's objectives, which provide:

> "(4) To fully develop the latent intellectual and spiritual wealth of our people, so that the values of the intelligence and the spirit of exceptional personalities that arise from all of its social sectors, especially those less favored in financial resources, can be put to the service of Puerto Rican society.
>
> (5) ... ...
>
> (6) To keep in mind that because of its nature as a University and because of its identification with the life ideals of Puerto Rico, it is essentially linked to the values and interests of all democratic communities."

VI

Therefore, we resolve that the requirement that demands that Puerto Rican students who apply for admission at the UPR come from a school authorized to operate in Puerto Rico by the Department of Education is null because it violates the constitutional provision that guarantees equal protection under the laws and it attempts against the right to education consecrated in Section 5 of Article II of the Constitution of the Commonwealth of Puerto Rico.

In the balance of interests, we hold that the harm that the University would suffer by admitting the plaintiffs, if any, is minimal when compared to the harm that the latter would suffer if they are not admitted. We say this because such action would irreparably cut off the university student lives of the plaintiffs.

Finally, it is proper to point out that the State's lack of action, particularly the Department of Education, in this entire matter deserves chastisement. In a period of eleven years, said Department limited itself to forward three timid letters to the director of the Yauco Baptist School. In the face of this lack of affirmative action on the part of the State to force these schools to comply with the law, they now attempt to penalize these students so that their schools obey the law. After all, these students are only victims in this struggle between the State and the schools, because they studied in these schools due to their parents' mandate. The State should have utilized the effective and most efficient remedy that it has available to it, which is a civil action through an injunction against the schools, or a criminal action against the directors of the same.

We want to categorically point out that the results that we have reached in regards to the students' claim against the University of Puerto Rico does not prejudge the claims of the Directors of the Schools against the State and any others that the State on its day might raise and file before this forum or in the administrative agency against these schools and their directors. This judgment does not create nor grant any right whatsoever in favor of the schools from which the plaintiff students come.

On the foregoing grounds, the injunction requested by the students against the University is GRANTED and a writ of permanent injunction is issued against the University of Puerto Rico, its Chancellors, the Director of the Office of Academic Affairs of the Central Administration of the U.P.R., ORDERING THEM to process forthwith the applications for admission

of the seven student plaintiffs in accordance with the standard procedures.

Because there exists no reason whatsoever to delay the passing of judgment on the students' claim against the University until the final resolution of the litigation, it is expressly ordered that this Judgment be recorded.

ENTER AND NOTIFY.

Given in San Juan, Puerto Rico, on 25 June 1991.

(Sgd) (Unreadable)
Arnaldo Lopez-Rodriguez
Superior Court Judge

I Certify:

Paulita Santiago-Cartagena
General Clerk

By: /Sgd/ S. Ríos
Deputy Clerk

((There appear unreadable initials
at the left-hand margin of every page.))

—CERTIFIED—

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U. S . Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

B1

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN SECTION

ASSOCIATION OF CHRISTIAN ACADEMIES
AND SCHOOLS OF PUERTO RICO, ET ALS
Plaintiffs

vs.

COMMONWEALTH OF PUERTO RICO ET ALS
Defendants

CIVIL NO.: K PE 91-0734 (904)

ON: DECLARATORY JUDGMENT
PROVISIONAL INJUNCTION
PRELIMINARY AND
PERMANENT INJUNCTION

PARTIAL JUDGMENT

I

The Association of Christian Academies and Schools of Puerto Rico and its twelve centers of elementary and secondary education that compose the same, pray that this Court issue a declaratory judgment for the purpose of declaring that said private educational institutions, that teach at the pre-school, elementary and secondary (non-university) levels, may do so without the requirement for a license required by Law No. 31 of 10 May 1976, as amended by Law No. 68 of 28 August 1990, *3 L.P.R.A. sec. 397-397J.* They further request that Law No. 68, *supra*, be declared unconstitutional in its application to their schools.

They alleged, in synthesis, the following:

1. That in 1991 they had about one thousand (1,000) students enrolled in their schools.

2. That for the Pastors of the plaintiff churches the educational function is inseparable from religion, that is, that church and school are indivisible synonyms.

3. That the plaintiff schools are different from all other public and private schools because they utilize a method wherein all subjects are presented to the students from a biblical point of view; that the educational materials that they utilize is full of verses taken directly from the Bible. Thus, for example, the plaintiffs point out that a child who learns how to read will do so by reciting biblical verses; that by learning through that system the student is continually exposed to God's words, regardless of the subject he/she is studying.

4. That the educational methodology utilized by them, known as "Accelerated Christian Education"is the product of forty (40) years of hard pedagogic research through which the student is exposed to a series of subjects of progressive contents in each educational area and they are furnished a series of self-examinations on each subject; that the students work at their own capacity or pace and after completing the booklet and passing the self-examination they are subjected to a supervised examination. Once they have passed this examination, the students move on to the next step and so on successively until they reach the twelfth level of learning, equivalent to the fourth year of high school.

5. That the teachers in this system perform the function of facilitators and supervisors, quite similar to tutors, and are available to keep discipline and assist the student.

6. That the plaintiff schools complement their classes with courses on Spanish, Social Studies and History of Puerto Rico.

7. That for the Pastors and the plaintiff schools, the school is an inseparable part of their faith and any action of the State that controls and regulates the functioning of the same violates the free exercise of rights that are constitutionally set forth.

8. *That the schools have been consistent in refusing to request the license issued by the Department of Education.*

9. That said position is based in their theological conviction that the State can not control nor establish rules for an entity that belongs to God; that the intervention that the State would have, through the Department of Education by granting them a license, violates their beliefs.

10. The schools also believe that the criteria, standards, regulations and requisites utilized by the Department of Education are rooted in a secular humanistic philosophy, which constitutes a religion opposite to theirs. According to the schools, the public education system is a product of the absence of God, in other words, of secular humanism.

11. That the school directors have been threatened since 1978 on different occasions by the previous Secretary of the Department of Public Education and by the current Secretary of the Department of Education, as well as by the Department of Justice, because of their refusal to submit themselves to the licensing procedure provided by Law No. 31, *supra*.

The State denied the essential allegations of the complaint and as affirmative defenses it invoked, among others, the following:

1. That the refusal of the plaintiff schools to submit to the licensing procedure set forth in Law No. 68, *supra*, constitutes a highly censurable act of civil disobedience.

2. That both Law No. 68 and its new regulations are constitutionally valid, that they do not violate the principle of separation of Church and State, wherefore said legislation is completely neutral and that the statute at issue does not exert a positive nor a negative influence on the free exercise of the plaintiffs' decision. That the purpose of said statute is completely secular.

3. That the plaintiff schools have not exhausted administrative remedies, wherefore aid of jurisdiction is not proper at this stage.

4. That said schools are not entitled to be exempt from the licensing requirement and that such exemption would constitute reverse discrimination which would place all educational institutions that comply with the law at a disadvantage.

Through a counterclaim, the State requested that a permanent injunction be issued against the persons in charge of the aforesaid school, forbidding them to operate the same without the corresponding license.

II

The following facts are not at controversy because they were accepted by the plaintiff schools, to wit: (1) that the aforesaid schools operate private educational institutions at the primary and secondary levels without the license required by Law No. 68, *supra*, and (2) that they refuse to submit themselves to the administrative procedure conducive to their licensing.

In essence, what the plaintiff schools are requesting from us is, plainly and simply, that we relieve them from the licensing requirement without their first having made such claim to the General Council on Education, the body charged with licensing all public and private educational institutions at the pre-school, elementary, secondary, technical-vocational, post-secondary (non-university) levels that intends to operate in the Commonwealth of Puerto Rico. Article 7.07, Law No. 68, *supra*, *3 L.P.R.A. section 397d (5)*. The Director of the General Council on Education is the person charged with overseeing compliance with said law.

Because of the technical nature of this matter and due to the specialized knowledge that said official has on educational matters, we determine that this request made of us by the plaintiff schools must be submitted to him in the first instance.

III

It pertains to the Director of the G.C.E. to make the initial determination as to whether the application of Law No. 68 and its new regulation, effective since the month of April 1992, in the circumstances alleged by the plaintiff schools, would entail an excessive administrative intervention in its religious matters, in such a way that it would conflict with their constitutional rights consecrated in Article II, Section 3, of the Constitution of the Commonwealth of Puerto Rico, which provides for the complete separation of the Church and the State. In other words, whether the application of the licensing requirements constitutes a substantial burden that affects the practice of religion of the plaintiff schools beyond an incidental effect of the uniform regulation of secular activities.

There is no doubt whatsoever that Law No. 68, *supra*, and its Regulation have a completely secular purpose and that they contain a secular effect that neither promotes nor inhibits religion. What would remain to be determined is whether said

legislation will or will not entail an excessive intervention in the religious affairs of the plaintiff schools. *Committee For Public Education v. Regan*, 444 U.S. 646 (1980); *Meek v. Pittenger*, 421 U.S. 349, 358 (1975); *Díaz-Hernández v. Colegio Nuestra Sra. de La Merced*, 89 J.T.S. 53 (June 1989).

As we said earlier, it pertains to the Director of the Council, in the first instance, to make such determination because of the technical nature of said educational issue and his specialized knowledge on that subject.

A constitutional charge on administrative actions is subject to the rule of exhaustion of administrative remedies. The mere fact that a plaintiff invokes a constitutional issue does not automatically set aside the administrative process. *Vélez-Ramírez v. Romero Barceló*, 112 D.P.R. 716, 728 (1982); *First Federal v. Asociación de Condómines*, 114 D.P.R. 426-438 (1983).

The doctrine of exhaustion of administrative remedies applies fully to this situation. The same complies with the objective of maintaining an adequate balance and distribution of power and tasks between administrative agencies and the judicial branch. *Febres v. Feijoó*, 106 D.P.R. 676 (1978). The decision whether to require exhaustion or not does not depend on rigid objective criteria, but in the light of the circumstances of the case and the agency's particular expertise, it is understood that judicial intervention would be premature. The balance of power that must exist between agencies and the courts, and the need for and convenience of having a complete administrative record, advise that administrative processes be culminated prior to a judicial examination. Davis, *Administrative Law Treatise*, St. Paul, Minnesota, West Publishing Co., 1958, Vol. 3, Secs. 19.01 and 20.01, and Davis, *Administrative Law of the Seventies*, Rochester, New York, Lawyers' Co-operative Co., 1976, Sec. 20.01; *Vélez-Ramírez v. Romero-Barceló, supra*, on pages

722-723. Also see *Delgado-Rodríguez v. Nazario-Ferrer*, 88 J.T.S. 63; *Mercado-Vega v. U.P.R.*, 91 J.T.S. 41 (18 April 1991).

As is known, by way of exception the Court may relieve a petitioner from having to exhaust some or all of the administrative remedies in cases wherein it is shown: (a) that said remedy is inadequate; (b) when requiring their exhaustion would result in an irreparable harm to the movant and the balance of interests does not justify exhausting said remedies; (c) the administrative recourse constitutes a useless and ineffective effort; (d) the agency clearly does not have jurisdiction or the issue is one strictly of law and the administrative expertise and discretion are unnecessary; or (e) when a substantial violation of constitutional rights is alleged, that is, a claim for violation of civil rights legislation when the action involves a violation of patent intensity of the rights of the individual that claims for urgent redress. *Section 4.3, Law No. 170 of 12 August 1988 known as The Uniform Administrative Procedures Act for the Commonwealth of Puerto Rico, 3 L.P.R.A. Sec. 2101-2201*; *First Federal Savings v. Asoc. de Condómines*, 114 D.P.R. 426 (1983); *Rivera v. Commonwealth*, 88 J.T.S. 81; *Brunet-Justiniano v. Hon. Rafael Hernández-Colón*, 92 J.T.S. 45 (10 April 1992).

The allegations of the complaint do not reveal any of the foregoing exceptions. In addition, all of the constitutional issues formulated by the plaintiff schools are not quite clear and above all are based on some facts that are not precise and that in our judgment must be aired before the Director of the Council.

One last consideration. The practice of religion does not create a separate province wherein the Government is banned from enforcing the laws. The coactive force of the law is equal for all. *Scn. Victoria Capella v. Iglesia de Dios Pentecostal, Inc.*, 102 D.P.R. 20 (1974).

For the foregoing considerations, Judgment is passed dismissing the claim for Declaratory Judgment.

ENTER AND NOTIFY.

Given in San Juan, Puerto Rico, on 12 June 1992.

(Sgd) (Unreadable)
Arnaldo Lopez-Rodriguez
Superior Court Judge

I Certify:
Paulita Santiago-Cartagena
General Clerk

By: /Sgd/ (Unreadable)
Deputy Clerk

((There appear unreadable initials
at the left-hand margin of every page.))

—CERTIFIED—

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

C1

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN SECTION

ASSOC. OF CHRISTIAN ACADEMIES AND SCHOOLS OF PR

Plaintiff

vs

COMMONWEALTH OF PR ET AL

Defendants

CIVIL NO.: K PE91-0734 (904)

ON: DECLARATORY JUDGMENT, ETC.

RESOLUTION

As to the foregoing Motion on reconsideration, DENIED. The Clerk of the Court is ordered to enter forthwith the Partial Judgment issued and notified last 12 June 1992 because there exists no reason to postpone the passing of the same until the final resolution of the litigation — still to be resolved is the petition for injunction filed by the State through an appeal — *Rule 44.1 of Civil Procedure.*

The plaintiff party must comply with the provisions of the Judgment and what was ordered to it in Open Court on *11 June 1992*. See Minutes for that day wherein are recorded the events of all that occurred at said hearing.

Notify.

Given in San Juan, Puerto Rico, on 29 June 1992.

/Sgd/ (Unreadable)
Arnaldo Lopez-Rodriguez
Superior Court Judge

Copy notified to:

Mr. Edric E. Vivoni: HC-01, Box 3933, Adjuntas PR 00601

Ms. Rebecca de León-Ríos, Esq. and/or Ms. Jennie Rabell, Esq.: P.O. Box 192, San Juan PR 00902

Mr. Julio Nigaglioni: Bco. de Ponce Bldg., Suite 11103, Hato Rey, PR 00918

Ms. María T. Palou: P.O. Box 5429, Hato Rey, PR 00918

Today, 30 June 1992.

P. Santiago, Gen. Clk.

/Sgd/ S. Ríos
By: Sonia Ríos-Reyes
Ctrm. Svcs. Clerk

— CERTIFIED —

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

GENERAL COUNCIL ON EDUCATION
COMMONWEALTH OF PUERTO RICO

Receipt is acknowledged of your document on *Application to the Council on Education (GCE)* that you forwarded to us on 29 June 1992 on behalf of the Association of Christian Academies and Schools of Puerto Rico (ACASPR). The aforesaid document is related to the partial judgment issued by the Superior Court of Puerto Rico on 12 June 1992. This judgment requires the (ACASPR) to resort to the GCE to request an authorization license to operate an educational institution. Your application is submitted supposedly to:

> *"comply with the order of the Superior Court without it being deemed thereby that in any way it is a waiver of the issues brought before the Court or of the issues or proceedings before the courts of justice of Puerto Rico or of the United States. Neither does the same constitute an all-encompassing and exhaustive statement of all of the rights that protect the petitioners."*

Banco Popular de Puerto Rico
(Formerly Banco de Ponce)
#268 Muñoz Rivera Ave. ■ 21st Floor ■ Hato Rey ■ Puerto Rico 00919
P.O. Box 5429 ■ Hato Rey ■Puerto Rico 00919
Telephones: (809) 764-0101 Fax: (809) 764-0820

In said document you make diverse allegations about decisions made by the Superior Court that it does not pertain to the GCE to pass judgment on the same. It arises from the document that the petitioners will continue with a legal proceeding about the case.

The General Council on Education also takes notice of the Notice of Judgment issued by the Superior Court of Puerto Rico in Civil Case KPE91-0734 on Injunction. In this Judgment the

Honorable Judge Arnaldo Lopez-Rodriguez dismisses the claim on declaratory judgment of the petitioners and concludes that:

> *"It pertains to the Director of the General Council on Education to make the initial determination as to whether the application of Law No. 68 and its new regulation, effective since the month of April 1992, in the circumstances alleged by the plaintiff schools, would entail an excessive administrative intervention in its religious matters, in such a way that it would conflict with their constitutional rights consecrated in Article II, Section 3, of the Constitution of the Commonwealth of Puerto Rico, which provides for the complete separation of the Church and the State. In other words, whether the application of the licensing requirements constitutes a substantial burden that affects the practice of religion of the plaintiff schools beyond an incidental effect of the uniform regulation of secular activities."*

The General Council on Education has reviewed the provisions of Law No. 68 and the *Regulation for the Granting of Licenses to Private Educational Institutions and Public Educational Institutions at the Pre-School, Elementary, Secondary, Special, Vocational, Technical and High-Skills or Post-Secondary Non-University Levels in Puerto Rico*, in force since 28 April 1992 and concludes that the same does not *constitute a substantial burden that affects the practice of religion of the plaintiff schools beyond an incidental effect of the uniform regulation of secular activities.*

Enclosed is a copy of the Regulation, which is presumed to be of your knowledge, since said Regulation is the product of public hearings on the dates of 2, 3, 5 and 6 December 1991 after notice to the community in general on 28, 29 and 30 October 1991. In the light of the provisions of Law No. 68 and of the

contents of the GCE's Regulation for the Granting of Licenses, to which no reference is made in your request to the GCE, we are forwarding to you an Application for a License to operate a private educational institution at the pre-school, elementary, secondary, vocational, technical vocational, post-secondary non-university levels of the type that the petitioners are operating or intend to operate.

Should the petitioners not file their application for a license for the aforesaid institutions, the GCE will find itself forced to demand compliance with Law No. 68 and the Regulation that it has approved. The GCE draws the petitioners' attention to the contents of the Regulation for the Granting of Licenses to the effects that in none of its parts the GCE dictates standards about the profile of the student to be educated, the contents of the curriculum nor the educational methodology. Neither does the Regulation contain any provision whatsoever that modifies the educational philosophy of the institution to which a license is granted; the only requirement is that we know the mission of the educational institution and that its educational components respond to the same. It is also required that there exist internal government provisions regarding student and fiscal affairs, as well as administration. To guarantee to the students and their parents that there is a proper environment for the best development of the teaching and learning process, there are provisions in the Regulation that include requirements on safety, health, adequacy of physical buildings and that the teaching staff be duly certified.

For all of the foregoing, the GCE reiterates to the Association of Christian Academies and Schools of Puerto Rico that it is necessary to comply with the provision of applying for licenses for their schools in harmony with Law No. 68 and the Regulation for the Granting of Licenses.

The GCE does not go into resolving the constitutional aspects presented by the petitioners because the same are outside its jurisdiction.

The directing personnel of the GCE are available to the Association of Christian Academies and Schools of Puerto Rico to explain in greater detail, should it be necessary, the scope of the provisions of the Regulation for the Granting of Licenses.

Cordially,

/Sgd/ Guillermo Irizarry Rubio
Guillermo Irizarry-Rubio
President

lmp

Enclosure

— CERTIFIED —

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

E1

IN THE SUPREME COURT OF PUERTO RICO

Association of Christian Academies and Schools of Puerto Rico, et al,

Appellants

v.

Commonwealth of P.R. et al,

Appellees

No. AC-91-478
AC-92-434

Bench composed of its President, Associate Justice Mr. Rebollo-López, Associate Justice Madam Naveira de Rodón and Associate Justice Mr. Hernández-Denton

RESOLUTION

San Juan, Puerto Rico, on 30 July 1992.

Recourse AC-92-434, *Association of Christian Academies and Schools of P.R. et al v. Commonwealth of P.R. et al* is consolidated with AC-91-478, *Association of Christian Academies and Schools of P.R., et al v. Commonwealth of P.R., et al.*

Having considered the recourse filed as a petition for *certiorari*, the writ is issued.

The Clerk will issue a writ of *certiorari* addressed to the Superior Court, San Juan Section, the Hon. Arnaldo López-Rodríguez, Judge, for him to forward to the Clerk of this Court the original case files or a copy of the same in Civil Case Number K PE 91-0734 (904) to which the petition filed in the instant case refers, for the purpose of reviewing the Judgment entered by said Court on 12 June 1992 and in order to rule as is proper at law.

It was so agreed by the Court and the Deputy General Clerk so certifies.

/Sgd/ Carmen E. Cruz Rivera
Carmen E. Cruz-Rivera
Deputy General Clerk

(Stamped):

NOTIFIED ON:
31 JULY 1992

BY: /Initials/ (Unreadable)

— CERTIFIED —

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

F1

IN THE SUPREME COURT OF PUERTO RICO

ASSOCIATION OF CHRISTIAN
ACADEMIES AND SCHOOLS OF P.R., ET AL
Petitioners-Appellants

v.

COMMONWEALTH OF PUERTO
RICO, DEPARTMENT OF
EDUCATION, ET AL

Appellees

No. AC-92-434
Cons. AC-91-478

Opinion of the Court written by Associate Justice Mister FUSTER-BERLINGERI.

In San Juan, Puerto Rico, on 22 February 1994.

We have before our consideration two recourses on constitutional issues closely related to each other, which have been consolidated. In the first case we have to resolve, in essence, whether the regulations imposed by the State on private religious schools violates the constitutional guarantee of the free practice of religion. In the second case we must resolve whether the requirement of admission of the University of Puerto Rico that all applicants be graduates of a high school authorized by the Department of Education to operate in the Island violates the clause of equal protection of the laws.

I

Between 30 April and 1 May 1991 the University of Puerto Rico (hereinafter UPR) informed seven students that their applications for admission could not be processed because they had not graduated from schools certified by the Department of Education (formerly the Department of Public Education) pur-

suant to Law No. 31 of 10 May 1976, as amended by Law No. 49 of 30 June 1988, 18 L.P.R.A. Secs. 2101 *et seq.*, and Law No. 68 of 28 August 1990, 3 L.P.R.A. Sec. 391 *et seq.* Said law requires that all educational institutions at the pre-school, elementary and secondary levels obtain a license from the Department of Education to be able to operate in Puerto Rico. The UPR informed the students that their applications would be held in abeyance until the schools wherefrom they came obtained their license from the public agency.

On 17 May 1991 the Association of Christian Academies and Schools, a group of schools belonging to said organization, several Pastors and the seven students whose applications were held in abeyance (represented by their parents) initiated before the Superior Court a civil action on declaratory judgment, provisional injunction and preliminary and permanent injunction against the Commonwealth of Puerto Rico (hereinafter Commonwealth), the Department of Education, its then Secretary Celeste Benítez, the Department of Justice, its then Secretary Héctor Rivera-Cruz, the UPR and its then President José M. Saldaña.

In synthesis, the plaintiff students alleged that the UPR's admission requirement was unconstitutional because it violated the clause on equal protection of the laws and their constitutional right to receive an education. On their part, the plaintiff schools alleged that the requirement to obtain a license, demanded by the aforesaid Law No. 31, as amended, was unconstitutional because it violated the doctrine of separation of the Church and the State.

On 12 June 1991 the Trial Court issued an order whereby it separated the claims included in the complaint. It ruled that it would handle the claims of the plaintiff students as a "preliminary and permanent injunction," while the claims of the Association and of the schools would be aired through a declaratory judgment.

After several procedural incidents, on 25 June 1991 the Superior Court issued a partial judgment wherein it declared unconstitutional said requirement for admission to the UPR and ordered the University to process the students' applications for admission.[1] The Court based its decision on two grounds. First, it deemed that the admission requirement contravened the constitutional clause on equal protection of the laws, since it was not applied to all students with the same rigor. According to the Court, not all candidates for admission were required to be graduates of a school accredited by the Department of Education, since students coming from the United States or other countries were only required proof that the school where they came from had "the government's authorization or accreditation," without the UPR inquiring about the requirements imposed by the corresponding government on the educational institution in question. Neither was this requirement demanded from students who took the equivalency test administered by the Department of Education. The Trial Court also concluded that the aforesaid requirement shut "the doors of the University to self-taught individuals who apply for admission."

In the second place, the Court adduced that the challenged requirement violated the fundamental right to education and as

---

[1] Not satisfied with this ruling of the Superior Court, on 16 July 1991 the Commonwealth of Puerto Rico, through the Office of the Solicitor General, filed a recourse on appeal before the Supreme Court, accompanied by a motion in aid of jurisdiction.

On 19 July 1991 we issued a resolution denying the recourse filed by the State. Subsequently the State, as part of its motion for reconsideration, requested that it be allowed to intervene as "*Amicus Curiae*" in the recourse filed by the UPR. Said participation was accepted through our resolution of 23 August 1991. The Commonwealth presented its pleadings on 14 November 1991.

Likewise, on 10 August 1992 the Rutherford Institute, through a motion, requested from this Court permission to intervene as "*Amicus Curiae*." This Court did not take any action on said petition.

such, it was subject to a strict judicial scrutiny. The Court concluded that the University had not been able to rigorously justify such requirement.

On 26 July 1991 the UPR appeared before us through a writ of appeal and requested the reversal of the judgment issued on 25 June 1991. It charged the Trial Forum with having erred when it ruled that the requirement at controversy was unconstitutional.[2] Through a resolution of 30 July 1991 we accepted this recourse of appeal.[3]

---

[2] The UPR specifically pointed out the commission of the following errors:

1. The Court erred when it decreed that the admission requirement violates the clause of equal protection of the laws and the fundamental right to education.

2. The Court erred when it issued the injunction without a constitutional violation having been shown.

[3] On 2 August 1991 the defendant-appellee party, through an "urgent motion in aid of jurisdiction and on reconsideration," informed us that the UPR had already admitted all of the plaintiff students, prior to the filing of their recourse on appeal. The students requested that they be allowed to begin their studies in the University, since they had already made all of the necessary arrangements — financial and otherwise — to study there.

Through a resolution of 2 August 1991 we granted a term to the UPR to express itself about these latest allegations and remedies requested by the students and for it to explain "...the reasons that it had not to inform in its previous briefs the facts alleged by the appellees [sic] in the aforesaid motion in relation to their admission to said University."

On 9 August 1991, after having evaluated the plaintiffs' motions in aid of jurisdiction in the light of the document filed by the UPR, through a resolution we ordered the provisional admission of the students to the UPR. Said action of the Court had the effect of making moot the second item of error pointed out by the UPR in its appeal regarding the injunction requested by the students against the University so that their applications for admission be processed. In view that more than two and a half years have elapsed since we ordered the temporary admission of these students, for reasons of equity we resolve that the latter may complete their university studies that they have begun.

On the other hand, on 12 June 1992 the Trial Court dismissed the other separate portion of the case, the claim of the Association on declaratory judgment, because it understood that it was necessary that the Association exhaust the administrative remedies. It resolved that it pertained to the Director of the General Council on Education to determine whether the application of Law No. 68 of 28 August 1990 and its new regulation, in force since the month of April 1992, in the circumstances alleged by the plaintiff schools would entail an excessive administrative intervention in their religious affairs, in such a manner that it would conflict with the constitutional rights consecrated in Art. II, Section 3 of the Constitution of the Commonwealth of Puerto Rico. It further resolved that Law 68 has a completely secular purpose and neither promotes nor inhibits religion.

Not satisfied with said determination, on 17 June 1992 the Association filed a motion on reconsideration and petition for additional findings of fact and conclusions of law wherein it pointed out that the plaintiffs had not requested that they be exempted from the requirement imposed by Law 31, but that the law be declared unconstitutional. The Superior Court accepted said motion on 23 June 1992 but DENIED the same on 29 June 1992.

Months later, the plaintiff Association filed before us a motion in aid of jurisdiction wherein it requested from us that we allow it to continue with the action on declaratory judgment (the other separate portion of the case) and that we order the Director of the Office of Academic Affairs of the UPR to process the applications for admission of other students who came from schools affiliated to the Association.

Through a resolution of 7 May 1992 we pointed out, as to the first petition, that there was nothing to provide. We clarified that none of our orders or resolutions had the effect of staying the separate action on declaratory judgment that the Trial Forum remitted to the ordinary proceedings.

As to the second petition, we DENIED it without prejudice that the student in question and any others in her same position could request to intervene in the case and their cases were evaluated individually.

In compliance with the order of the Trial Court and in order to avoid that the latter issue an order for the closing of the schools, the plaintiff party resorted to the General Council on Education on 29 June 1992, for the latter to resolve the issues about Law No. 68 and its regulation. Through a letter dated 10 July 1992 the General Council on Education informed the plaintiff party that after having reviewed the law and the regulation in question, it concluded that the same did not constitute a substantial burden that would affect the practice of the religion of the plaintiff schools beyond an incidental effect on the uniform regulation of secular activities.

On 28 July 1992 the plaintiff party appealed the judgment of the Trial Court before us.

Through a resolution of 30 July 1992 we consolidated the case of the Association with the case of the UPR. In addition, we agreed to consider the writ on appeal filed by the Association as a petition for *certiorari* and to issue the writ.

After several procedural incidents, on 4 September 1992, through a resolution, we ordered the stay of the proceedings before the Trial Court and the administrative organisms in view that we had issued a writ of *certiorari* on 30 July 1992.

On 10 December 1992 the Association filed its pleadings.

Subsequently, on 14 April 1993 the Office of the Solicitor General filed its report before us.

After having examined the pleadings of the parties, we proceed to resolve.

II

In the case of the Association, the appellants pointed out numerous alleged errors. In essence these are reduced to challenging the constitutionality of Law 31 of 10 May 1976, as amended, because they understand that its application prevents their free exercise of their religion consecrated under Article II,

Section 3 of the Constitution of the Commonwealth of Puerto Rico.[4] Let us see if they are right.

---

[4] Although in its pleadings the plaintiff party places greater emphasis on Law No. 31 of 10 May 1976, it must be pointed out that there are several laws that, in conjunction, govern the operation of private schools in the Island. Let us see.

Law No. 31 of 10 May 1976 established the requirement of obtaining and maintaining in force a license for private schools that were to be established and operated in Puerto Rico. Said law was amended by Law No. 49 of 30 June 1988.

Law No. 49 establishes the rules and requirements with which private schools that operate or want to operate in Puerto Rico must comply.

Said Law empowered the Secretary of Public Education to promulgate the necessary rules and regulations for the granting of licenses to private institutions from the pre-school to the post-secondary non-university levels.

Subsequently, on 28 August 1990, Law No. 68, known as the Organic Act of the Department of Education, was enacted. Said Law created the General Council on Education and granted to it authority to grant licenses and to authorize the establishment and operation in Puerto Rico of non-university public and private schools, pursuant to Chapter II of Law No. 31 of 10 May 1976, as amended by Law No. 49, *supra*. (18 LPRA Secs. 2111 through 2125).

In order to make feasible the compliance with its functions and in harmony with the applicable laws in force, the General Council on Education approved, in January 1992, the Regulation for the Granting of Licenses to Private Educational Institutions and Public Educational Institutions at the Pre-School, Elementary, Secondary, Special, Vocational, Technical and High-Skills or Post-Secondary Non-University Levels in Puerto Rico. This became effective on 30 April 1992.

Said regulation is divided into four chapters. Chapter 1 includes general provisions applicable to private and public educational institutions. In Chapter 2 provisions are established for the granting and renewal of licenses for private educational institutions. The provisions for the granting and renewal of licenses for public educational institutions are established in Chapter 3. Chapter 4 sets forth aspects of public liability and general legal provisions applicable to all educational institutions.

Article II, Section 3 of our Constitution establishes that:

> No law whatsoever will be enacted regarding the establishment of any religion nor will the free exercise of a religious cult be forbidden. There will be complete separation of the church and the state.

Said Article consecrates freedom of religion, forbids that the State establish an official religion and orders full separation of Church and State. *Agostini v. Catholic Church*, 109 DPR 172 (1979); *Academia San Jorge v. L.R.B.*, 110 DPR 187 (1980); *Surinach v. Pesquera de Busquets*, 604 F.2d 73 (1979); *Sucrs. de Victoria v. Pentecost Church*, 102 DPR 20 (1974). In the instant case, although the plaintiff party alleged violation of Article II in all of its aspects, it is really a case wherein it is alleged that an act of the government violates the plaintiffs' right to the free exercise of their religion, both at the individual and at the collective levels.[5]

In *Díaz-Hernández v. Colegio Nuestra Señora del Pilar*, Op. of 8 June 1989, 123 DPR ___, 89 JTS 53, on page 6816, we established that the clause of freedom of worship guarantees the practice of individual or collective religious beliefs. In accordance with federal jurisprudence, we pointed out that although

---

[5] The plaintiff party sustained that the educational philosophy imposed by the State is secular humanism and that this is a religion contrary to the Christianity that they profess.

According to the plaintiffs, Law No. 68, *supra*, expresses in a direct manner that the Department of Education responds to a philosophy of a humanistic nature when it establishes, in its Article 1.02, fourth subparagraph, the following:

> Based on the *humanistic philosophy* of education that arises from our Constitution, a specific administrative structure is established by this statue, so that it may, properly said, expedite the educational autonomy of the school; shorten the institutional gaps among teachers, parents and administrative officials; and ensure the participation of these groups in the decision-making process.

freedom of creed is absolute, autonomy to *act* according to said beliefs has limitations.[6] When the State promotes a legitimate governmental end, but adversely affects the practice of a religious cult, the constitutional guarantee requires, in some situations, that concessions be made in order to allow the free exercise of religious beliefs. *Id.* at page 6817. Also see Rotunda Nowak & Young, *Treatise on Constitutional Law Substance & Procedure*, Sec. 21.6 (1986). However, not all governmental acts that intervene with freedom of worship require an accommodation. *Díaz-Hernández v. Colegio Nuestra Señora del Pilar*, *supra*, on page 6817. If the adverse effect of the government's act on religious practice is *incidental* and the State has a legitimate and compelling interest that justifies its action, the government's action prevails. But if the government's action is neutral and of general applicability, that is, if it has to do with a regulation of strict secular contents that befalls uniformly over an entire range of activities, then said regulation does not even have to be justified by a compelling interest of the State if it has only an incidental effect over a particular religious practice.[7]

In view of the foregoing, whenever an act of the government is challenged under the clause of freedom of worship, the interested party has the obligation to establish that the State does not have the corresponding public interest that justifies its action or that a *substantial* charge or burden has been imposed on the exercise of its religion. See *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 US 290, 303 (1985). A minimal or

---

[6] By way of an example, see *Cantwell v. Connecticut*, 310 US 296, 303-304 (1940).

[7] The latest case resolved by the Federal Supreme Court on the clause of the free exercise of worship, *Church of the Lukumi Babalu & Ernesto Pichardo v. Hialeah*, 124 L.Ed.2d 472 (1993) sustains that "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." Also see *Employment Div. Dept. of Human Resources of Oregon v. Smith*, 494 US 872, 108 L.Ed.2d 876 (1990).

incidental burden imposed by the State on a party ordinarily is not sufficient to successfully invoke the guarantee of freedom of worship. *Díaz-Hernández*, *supra*, on page 6817. Tribe, *American Constitutional Law*, Sec. 14-13, West Publishing (1988). A party that alleges that its freedom of worship has been violated has the burden of proof and must concretely show how is it that the regulation in question substantially violates the free exercise of its religion.[8] That is why, when pondering the issue before us, we must dilucidate whether the appellants have established that the requirements imposed by the State on the private religious schools in question substantially interfere with the free exercise of the religion that the appellants profess, in such a manner that some type of accommodation is required to protect their freedom of worship, or whether on the contrary, there exists only an incidental interference, product of an adequate interest of the State, in which case the claim of the affected party has no merit.

Law No. 49, *supra*, (18 LPRA Sec. 2113), in essence provides that in order to obtain a license to operate, educational institutions must comply with the following minimum requirements:

> a. Have a use permit for their physical plant issued by the corresponding government agency.
>
> b. Show evidence of the educational training and experience of the institution's faculty, taking into account the particular nature and objectives of the institution.
>
> c. Have facilities, equipment, library and laboratory services in such proportion as is compatible with

---

[8] See Valente, William D., 2 *Education Law*, Sec. 21.4 at page 345. See, for example, *State v. Andrews*, 65 Hawaii 289, 651 P.2d 473 (1982); *State v. Calvary Academy*, 217 Neb. 450, 348 N.W.2d 898 (1984); *Hill v. State*, 410 So.2d 431 (Ala. Cr. App. 1981).

the objectives and the nature of the requesting educational institution.

d. Have an educational plan or academic program that includes the forms and manners in which said plan is implemented.

e. Have the corresponding permits from the government agencies in relation to the protection of the health and safety of the students.

f. Have conducted a financial feasibility study that shows that the school can comply reasonably with the commitments that it will contract with respect to all components of the institution, or in the alternative, post before the Secretary a performance bond with an effectiveness of no less than one (1) year, issued by an insurer authorized to do business in Puerto Rico.

The regulation that implements the requirements imposed by Law No. 49, *supra*, lists the documents that private schools must file for their applications to be evaluated.

This regulation also requires that the institutions disclose certain information about the internal rules that govern *academic affairs* (admission requirements, promotion, retention and graduation of students; school calendar and proposed work program); *student affairs* (rules related to the cost of enrollment, fees, forms of payment, rules of conduct in the school facilities, evaluation system, grades, transcripts and certifications, sample files); *government affairs* (the institution's government structure, document that reflects its origin, a list of names of the principal officers); and *fiscal affairs* (system of administration of funds pertaining to transactions between the institution and the students, financial sustenance capability and maximum number of enrollment).

A detailed examination of the law and the regulation in question is not required in order to conclude that the require-

ments therein established are valid and do not substantially interfere with the plaintiffs' freedom of worship. Said requirements are strictly secular and constitute a minimal regulation addressed to guaranteeing that the educational services rendered by private institutions in the Island are adequate and are offered within a school environment that facilitates teaching and the students' learning. Concretely, said requirements pursue only common ends of general welfare. They regulate only fundamentally pertinent aspects of safety, health, physical structure, preparation of the teaching staff and financial viability of private schools. They are part of a uniform regulation created by the State, destined to guaranteeing the quality of education, a secular activity of great interest for the State.

It is clearly established in the federal field that the State has a preeminent interest in education and ample faculty and discretion has been recognized to it for regulating schools and assuring the quality of the education provided to the citizens. It has so been expressly resolved by the Supreme Court of the United States. See, for example, *Meyer v. Nebraska*, 262 US 236 (1923); *Vlandis v. Kline*, 412 US 441, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973); *Wisconsin v. Yoder*, 406 US 205, 213, 92 S.Ct. 1526, 1532, 32 L.Ed. 2d 15 (1972); *Lemon v. Kurtzman*, 403 US 602, 613, 91 S.Ct. 2105, 2112, 29 L.Ed.2d 745 (1971); *Hamilton v. University of California*, 293 US 245, 260-62, 55 S.Ct. 197, 203-4, 79 L.Ed. 343 (1934); *Pierce v. Society of Sisters*, 268 US 510, 534, 45 S.Ct. 571, 573, 69 L.Ed. 1070 (1925); *Marjorie Webster Jr. College v. Middle States Association of Colleges and Secondary Schools, Inc.*, 139 U.S. App. D.C. 217, 221 & n. 19, 432 F.2d 650, 654 & n. 19, *cert. denied*, 400 US 965, 91 S.Ct. 367, 27 L.Ed.2d 384 (1970); *Farmington v. Tokushiga*, 273 US 284 (1929); *Emerson v. Board of Education*, 330 US 1 (1947); *Board of Education v. Allen*, 392 US 236 (1968). Also see Valente, William D., 2 *Education Law*, Sec. 21.4, p. 345 (1985) and cases cited therein. *Id.* at page 346. It is proper to point out that in most of the cases wherein state requirements

have been invalidated, the courts have based their determinations not on the lack of a compelling interest on the part of the State, but on the amplitude, the vagueness or the *ultra vires* nature of the statute.

In our jurisdiction we have also recognized the great importance that education has for the State and how compelling is the public interest in that the educational institutions of the Island, both public and private, offer quality services. We have expressly resolved that through education the necessary preparation is provided for citizens to participate in the social and economic development of our collective life. *De Paz-Lisk v. Aponte-Roque*, opinion of 30 June 1989, 124 DPR ___, 89 JTS 69. The State, then, has to make sure that *all* of the teaching institutions of the Island, both public and private, provide a quality education and comply with certain minimum requirements of excellence as to curriculums, professional capacity of the teaching staff, physical plant, support resources and other similar requisites. When it issues a license to a private educational institution, the State accredits that the school complies with the minimum requirements and that the students receive at least the basic education that should be received by everyone who later on will join society in a productive fashion. That is why, in the exercise of its powers and duties, the State may validly regulate the operation of private educational institutions, including those of a religious nature that call themselves *church-schools*. To conclude that private religious educational institutions need not be subject to the State's regulations and that they need not comply with the licensing requirement to operate would greatly jeopardize the State's responsibility to oversee that all students in the Island receive an adequate education. See *Fellowship Baptist Church v. Benton*, 620 F.Supp. 308 (D.C. Iowa 1982).

The plaintiff party has not presented to us specific reasons or arguments nor has it brought forth particular situations that

concretely show how is it that the law or the regulation in question violate their freedom of worship or impose on the schools a *substantial* burden for the practice of their religion. The regulation created by the State does not impose on private educational institutions the obligation nor the need to abandon or modify their religious beliefs. Said schools are free to adapt the contents of the curriculum to their creed of preference and to adopt the teaching methods that they deem most appropriate. In addition, they can conduct such complimentary extracurricular activities as they may prefer. They may also require from their staff conditions that go beyond mere academic preparation. The regulation in question, thus, leaves open wide spaces within the educational process for the schools to be able to implement their religious beliefs in diverse substantial manners. Said regulation for the issuance of licenses does not dictate rules about the particular mission of private religious schools nor about their philosophical orientation. The educational philosophy, of a humanistic or another nature, that Law 68 may promote is applicable to public schools, not to private schools. The latter are free to adopt whatever philosophical orientation best fits their particular mission. Likewise, the curriculums, teaching methods, formation of the staff, extra-curricular activities and other elements of the educational process of each school may be different; they do not all have to be the same under the regulation in question, as long as there is compliance with certain minimum requirements to guarantee the best possible education.

Given the importance of the State's interest in the education of its citizens, we must rule out the alternative suggested by the appellant party that each private institution be free to establish its own criteria for the operation of the schools. That would be equivalent to forcing the State to accept the criteria that each institution wants to employ, regardless of their quality or their adequacy. It becomes obvious that the State could not reasonably rely on a system of that nature. Nevertheless, the State's regulation currently in force provides a compulsory system of a

uniform nature and of easy implementation, which assures the State that the schools will comply with certain minimal requirements when they operate. A regulation such as the one at bar has traditionally been the mechanism utilized for the attainment of the State's ends. We find no other alternate mechanism that can alleviate the incidental burden that this regulation may impose on the appellant party. Other alternate mechanisms, such as routine visits to the schools, administration of tests to and evaluations of students and teachers would entail the same or a greater degree of the State's participation in the operation of the schools. In all cases the schools would be subject to operating under some type of approval by the State. The regulation in the case at bar is a reasonable means whereby an objective attempt is made to attain an adequate education for the citizens.

In the absence of an excessive intromission in the affairs of these churches-schools as to their mission and objectives, curriculum, teaching methods and techniques and general administration, we sustain the validity of the challenged law and regulation.

III

Having seen to the claim of the appellant Association and Schools, let us proceed to resolve the claim of the UPR in the case before us.

As we have previously pointed out, the Trial Court declared unconstitutional the requirement for admission to the UPR that requires that all students must have graduated from a school authorized to operate in Puerto Rico by the Department of Education, because it understood that said requirement was contrary to the clause of equal protection of the laws and because it attempted, unallowably, against the constitutional right to education. The Trial Court concluded that the requirement for admission was applied in a discriminatory manner because students coming from high schools in the United States or from

foreign countries were not required any requirements of licensing or accreditation of their schools of origin as were required of those from Puerto Rico. The forum *a quo* erred in its determination.

We have repeatedly resolved that the constitutional clause that guarantees equal protection of the laws does not demand equal treatment of all citizens; it only forbids unequal and unjustified treatment. To determine whether a classification fits the demands of equal protection of the laws, we have subjected said classification to one of two classes of scrutiny: rational and strict. Under rational scrutiny, the classification will be valid if it pursues a legitimate end of the State and there exists a rational link between any conceivable legislative purpose and the classification. *M.& B.S. Inc. v. Dept. of Agriculture*, 118 DPR 319 (1987). On the contrary, under strict scrutiny the law will be valid if there exists a compelling interest or of a higher hierarchy of the State and the classification promotes precisely said interest. *Zachry v. Superior Court*, 104 DPR 267 (1975); *Berberena v. Echegoyen*, Op. of 28 June 1991, 126 DPR ___, 91 JTS 65. The applicable modality of the scrutiny will depend on the nature of the rights affected by the classification. Strict scrutiny applies if the legislation matches one of the so-called suspect classifications or if it affects a fundamental right. All other classifications will be examined under rational scrutiny. Suspect are all classifications based on race, color, sex, birth, social status, political or religious beliefs and nationality. Article I, Sec. 1 of the Constitution; *Wackenhut Corp. v. Rodríguez*, 100 DPR 518 (1972). Fundamental rights are those rooted in the Constitution. *León v. Torres*, 109 DPR 804 (1987).

The case at bar must be analyzed based on rational scrutiny. The requirement for admission to the UPR being challenged is not formulated on bases that match a suspect classification. Neither does it affect any fundamental right whatsoever, constitutionally speaking, since the right to education consecrated in

our Constitution is of limited contours and does not extend to the scope of a college education.

Article II, Section 5 of the Constitution of the Commonwealth provides in its pertinent part:

> Every person has the right to an education that tends to the full development of his/her personality and the strengthening of respect for man's rights and the fundamental freedoms. There will be a public education system that will be free and entirely non-sectarian.
>
> Teaching will be gratis in primary and secondary schools and, to the extent that the State's facilities so permit, it will be mandatory for primary schools.

Said provision evidently does not state that there is a right to obtain a college career from the State. The main purpose of the clause is to define the collective aspirations on education and to create a public education system exclusively at the primary and secondary levels. The language utilized in the cited Article and the clear history of this provision in the Constituent Convention indicate without a doubt that the right to education therein recognized is limited to education at the primary levels and is subject to the State's having the necessary resources for its implementation.[9]

---

[9] A concern arose among some of the delegates to the Constituent Convention about the scope of the word "right" within Section 5 of Article II and whether the intent was to create or not a right that was judicially enforceable before the State. We transcribe a part of that debate, which also reflects that the intent was not to include higher education within the scope of the Section:

> Mr. ALVARADO: The use of the word "right" in the amendment that Your Honor has proposed, does that have the scope of creating a right that may be judicially enforceable?
>
> Mr. BRUNET: This is one of many rights that we are consecrating constitutionally.

Since the Constitution does not consecrate any right to a college education, we can not affirm that in this case exists a fundamental right that matches the application of strict scrutiny of equal protection of the laws. Neither do the expressions made by this Court in the case of *Pagán v. UPR*, 107 DPR 720 (1978) have the effect of extending or creating in Puerto Rico a right to a college education. The Trial Court erred when it analyzed the validity of the requirement for admission under strict scrutiny because a fundamental right was not at issue. Let us then see whether there exists any problem of equal protection under rational scrutiny.

As part of the requirements to apply for admission at the UPR, said institution requires that the applicant students be

---

Mr. ALVARADO: I mean, the use of the word "right" could, for a person who is trying to obtain a seat in a public school for a child and does not obtain it because such seat is not available, would that grant him/her any judicial recourse, any right that could be concreted in a specific action by the courts?

Mr. BRUNET: No, this is not what we are trying to insert into the Constitution. The State would be doing so if a second amendment that I will offer were to be adopted, also making elementary school education mandatory.

Mr. ALVARADO: Would this then not be compellable in any manner whatsoever? This that the colleague is proposing is a declaration of the philosophy of education.

Mr. BRUNET: The purpose that education pursues.

Mr. ALVARADO: This pursues the purposes that are pursued with education, but it does not grant rights that can be made effective in the courts.

Mr. BRUNET: To what kind of education is it that we aspire that Puerto Rican children should have.

2 Dairy of Sessions of the Constituent Convention, 1961, on page 1456.

For further details of the rest of the debate among the delegates, see 2 Dairy of Sessions of the Constituent Convention, 1961, pages 1455-1464.

graduates of a high school accredited and authorized to operate in Puerto Rico by the Department of Education or through an equivalency test of the Department of Education.[10] If the student comes from a high school in the United States, he/she must submit evidence of the accreditation of the same by the Board of Education of the corresponding state.

The requirement demanded by the University is based on the provisions contained in Article II-1 of Law No. 49, *supra*, which provides:

> It will be compulsory that all private educational institutions that intend to operate at the pre-school, elementary, secondary, vocational, technical or non-university post-secondary levels in the Commonwealth of Puerto Rico obtain a license from the Secretary of Public Education of Puerto Rico. The Secretary of Public Education, hereinafter called the Secretary, shall have the exclusive authority to issue licenses to authorize the establishment and operation of the private educational institutions mentioned in this section.

In addition, Article III-3 of the same body of law provides that:

> No department, instrumentality, office, board, bureau or commission of the Government of the Commonwealth of Puerto Rico may make determinations, authorizations or accreditations of educational institutions nor recognize nor accredit degrees, diplomas, certificates or courses pertaining to the matters covered in this Chapter.

---

[10] Said requirement was demanded in the *Manual of Instructions and Application for Admission* in the versions published of the years 1990 through 1992 and it is also published in the version for 1993.

The UPR approved the requirement in question, both to comply with the aforesaid provisions of law that are part of the Island's public policy on education, as well as to facilitate the accomplishment of its own academic mission. It is well known that the UPR has limited resources for the performance of its tasks. Because of that, it has adopted rules and regulations for the efficient administration of its resources and thus make possible its mission of developing the Island's intellectual wealth, particularly of those students coming from the less favored strata. Article 2 of Law No. 1 of 20 January 1966, 18 LPRA Sec. 601. part of this task has been to decide institutionally which of its candidates for admission meet certain minimum requirements of academic preparation and knowledge, in order to admit the best qualified. As part of this process, the UPR relies on uniform criteria and accessible verification to pass judgment on the preparation of its candidates. This guarantee consists precisely of the license issued by the Department of Education.[11] The license constitutes the security that accredits that the student studied in an academic institution that, at least, complied with certain minimum quality standards. In addition, it guarantees to the UPR that the student who applies for admission has received an education that covered specific matters and subjects that are deemed necessary and that he/she had the facilities to furnish the curricular education, such as laboratory and library.

Without the requirement herein at issue it would be very difficult for the UPR to be able to distinguish between those students fit to deserve a post-secondary education from those who are not. Without said requirement the serious risk would be created that the UPR would make admission decisions inconse-

---

[11] In its pleadings the UPR points out that the admissions test (College Board) does not constitute a guarantee of the student's preparation. This test only measures some elementary skills and is utilized to differentiate candidates. The main purpose of the test is to identify the best candidates among all of the applicants.

quently and arbitrarily, given the absence of an essential uniform parameter to govern the process of selection of students.

On the other hand, the annulment of the admission criterion at controversy would to a great extent distort the purposes of and the public policy contemplated in Law 31, as amended. If the UPR had the obligation to admit students from unlicensed schools, there would be no real incentive for the schools to submit to the licensing process of the Department of Education. The authority of the Department of Education to license schools would then be futile. It is thus evident that the admission requirement at bar pursues a legitimate end of the State.

Furthermore, the requirement for admission is validly applied to all applicants for admission at the UPR. Therefore, there exists no kind of discrimination. All graduates of schools in Puerto Rico are treated equally. The "classification" perceived by the Trial Court that graduates of schools outside Puerto Rico are not treated equal to those of schools in Puerto Rico does not affect the plaintiffs, who are graduates of schools of the Island; and in addition, the differences in the application of the requirement for admission between the ones and the others are entirely rational. Those who come from schools in the United States and foreign countries are considered in accordance with rules *analogous* to those who have graduated from schools in Puerto Rico. If they come from *public* schools in the United States, said schools are backed up by the state government that regulates, operates and administers said institutions. If they come from private schools in the United States, they are required to show evidence that the school is licensed or accredited by their state of origin.[12] If they come from educational institutions in foreign countries, they are required proof that the institutions enjoy official recognition. Finally, if the student comes from a juris-

---

[12] In its pleadings the UPR points out that in all of its academic units it receives very few applications from students who come from private schools in the United States.

diction that does not license or approve its schools, the student must take an equivalency test offered by the Department of Education of Puerto Rico.

Students who graduate from schools that operate in Puerto Rico present certain similar characteristics, to wit: that they acquired their education in schools that operate under the Department of Education; that they received an education mostly in Spanish, except in schools where English prevails; that they took a series of courses that are particular to Puerto Rico, as would be the case of Puerto Rican literature and history; and that they achieved their social formation in our cultural environment. Identical requirements can not be demanded from students coming from outside Puerto Rico, because evidently these students come from an educational milieu different from ours. Therefore, it is valid to impose the admission requirement in question on graduates from Puerto Rico and to demand an *analogous* requirement from students from abroad, which has slight variants with respect to those from Puerto Rico depending on the different circumstances of each case. It is neither unreasonable nor arbitrary to require students coming from the United States or from foreign countries that their school of origin be accredited or licensed by the education authorities of their own jurisdiction, while the students from Puerto Rico are required that their school be licensed by the Department of Education. It would be unmanageable, unnecessary and even unlawful for the UPR to attempt to evaluate the schools of other jurisdictions, in substitution of the evaluations made by the education authorities of the same. In synthesis, the requirement is the same, with the only and inexorable variation that the organism that issues the license or accreditation is different, according to the place of origin of the student. It has to do, then, with a rational regulation that pursues a legitimate and important interest of the State. Here there is no breach of the equal protection of the laws.

IV

On the foregoing grounds, the partial judgment issued by the Trial Court whereby it declares unconstitutional the requirement for admission to the UPR discussed herein is REVOKED. The judgment whereby the Court *a quo* dismissed the claim wherein the validity of Law No. 31 of 10 May 1976, as amended, was challenged is CONFIRMED.

/Sgd/ Jaime B. Fuster
Jaime B. Fuster-Berlingeri
Associate Justice

(The initials J.B.F. appear on the
left-hand margin of every page.)

— CERTIFIED —

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

G1

IN THE SUPREME COURT OF PUERTO RICO

Association of Christian Academies
and Schools of Puerto Rico,

Appellees

v.

Commonwealth of Puerto Rico

Appellant

No. AC-91-478
AC-92-434

Appeal Arising from the Superior Court,
San Juan Section

Injunction

RESOLUTION

San Juan, Puerto Rico, on 30 March 1994.

As to the motion on reconsideration submitted, DENIED.

It was so agreed by the Court and the General Clerk so certifies. Associate Justice Mr. Negrón-García does not intervene.

Francisco R. Agrait-Lladó
General Clerk

G2

— CERTIFIED —

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

H1

IN THE SUPREME COURT OF PUERTO RICO

Association of Christian Academies
and Schools of P.R. et als.,

Appellants

v.

Commonwealth of P.R. et als.,

Appellees

No. AC-92-434
Cons. AC-91-478

RESOLUTION

San Juan, Puerto Rico, on 3 June 1994.

Having examined the informative motion filed on 12 May of the running year and the urgent motion in aid of jurisdiction for us to stay the proceedings in the trial court, and particularly the order issued by said forum for them to express themselves in ten (10) days about the State's petition for them to comply with our mandate, the Court DENIES both requests.

Notify by mail and by telephone.

It was so agreed by the Court and the General Clerk so certifies. Chief Justice Mr. Andreu-García did not intervene. Associate Justice Mr. Negrón García did not intervene.

((There appears the Round Stamp of the
COMMONWEALTH OF PUERTO RICO,
GENERAL COURT OF JUSTICE, SUPREME COURT.))

H2

/Sgd/ (Unreadable)
Francisco R. Agrait-Lladó
General Clerk

NOTIFIED ON:
6 June 1994

By: /Sgd/ Jorge Maldonado

— CERTIFIED —

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN SECTION

ASSOCIATION OF CHRISTIAN ACADEMIES AND SCHOOLS OF PUERTO RICO, ET ALS

Plaintiffs

vs.

COMMONWEALTH OF PUERTO RICO, ET ALS

Defendants

ON: DECLARATORY JUDGMENT
PROVISIONAL INJUNCTION
PRELIMINARY AND PERMANENT
INJUNCTION

CIVIL NO. KPE91-0734 (904)

JUDGMENT

Last 11 May 1994 we issued in the case at caption an order to show cause in the following terms:

> "Having seen and considered the Urgent Motion filed on 9 May of the running year by the Commonwealth of Puerto Rico in the case at caption as well as the documents attached to the same, wherein the following is alleged and prayed:
>
> 1. The Executive Director of the General Council on Education of the Commonwealth of Puerto Rico is Federico M. Matheu, who appears herein as petitioner.
>
> 2. Through its Opinion of 22 February 1994 our Honorable Supreme Court in the case of *Association of Christian Academies and Schools of P.R. vs. Commonwealth of Puerto Rico*, 94 J.T.S. 16, validated the

constitutionality of the State's regulating private religious schools after examining the juridical provisions pertaining to freedom of religious worship:

The regulation created by the State does not impose on private educational institutions the obligation nor the need to abandon or modify their religious beliefs. Said schools are free to adapt the contents of the curriculum to their creed of preference and to adopt the teaching methods that they deem most appropriate. In addition, they can conduct such complimentary extracurricular activities as they may prefer. They may also require from their staff conditions that go beyond mere academic preparation. The regulation in question, thus, leaves open wide spaces within the educational process for the schools to be able to implement their religious beliefs in diverse substantial manners. Said regulation for the issuance of licenses does not dictate rules about the particular mission of private religious schools nor about their philosophical orientation. (...)

In the absence of an excessive intromission in the affairs of these churches-schools as to their mission and objectives, curriculum, teaching methods and techniques and general administration, we sustain the validity of the challenged law and regulation." Id. on page 11520 [of the Spanish language text].

3. On 9 March 1994 the plaintiff party filed before the Honorable Supreme Court of Puerto Rico a Motion on Reconsideration and the same was DENIED through a Resolution of 30 March 1994.

4. Pursuant to the provisions of Section 3.7.2 of the Regulation for the Granting of Licenses to Private Educational Institutions and Public Educational Institutions at the Pre-School, Elementary, Secondary,

Special, Vocational, Technical and High-Skills or Post-Secondary Non-University Levels in Puerto Rico and of Law No. 49 of 30 June 1988, as amended, on 15 March 1994 and via certified mail, return receipt requested, Mrs. Carmen Pura Coriano, Acting Director of the Licensing Office of the General Council on Education, forwarded a communication to several educational institutions, members of the Association of Christian Academies and Schools of Puerto Rico and plaintiffs in the case at caption, requiring them to produce evidence of their licensing. See Annexes 1 through 9.

5. *As of this day the educational institutions described hereinbelow are operating without the corresponding license from the General Council on Education and have not filed their application for the Processing of the granting of their license:*

a. Christian Academy of the Southwest ("Academia Cristiana del Suroeste"), an educational institution at the pre-school, elementary, junior high and high school levels (K-12), located in Cabo Rojo, Puerto Rico, attached to the Baptist Biblical Church ("Iglesia Bíblica Bautista") and whose Pastor is the Rev. Dillard A. Morgan.

b. Bilingual Christian Academy, an educational institution at the pre-school, elementary, junior high and high school levels (K-12), located in Arecibo, Puerto Rico, attached to the Light and Life Fundamental Baptist Church ("Iglesia Bautista Fundamental Luz y Vida") and whose Pastor is the Rev. David Vélez.

c. Caribbean Grace Academy, an educational institution at the elementary, junior high

and high school levels (1-12) located in San German, Puerto Rico, attached to the Biblical Church ("Iglesia Bíblica") and whose Pastor is the Rev. Joseph Cerra.

d. Baptist School of Levittown ("Colegio Bautista de Levittown"), an educational institution located in Toa Alta, Levittown, Puerto Rico, whose director is Mr. Hernán Cortés.

e. Baptist Academy of Mayagüez ("Academia Bautista de Mayagüez"), an educational institution at the elementary, junior high and high school levels (1-12) located in Mayagüez, Puerto Rico, attached to the New Life Baptist Church ("Iglesia Bautista Nueva Vida") and whose Pastor is the Rev. Wayne Keeling.

f. Strong Castle Academy ("Academia Castillo Fuerte"), an educational institution at the junior high school level (9), located in Carolina, Puerto Rico and whose Administrator is Mr. Norberto Nazario.

g. Ponce Baptist Academy, an educational institution at the pre-school, elementary, junior high and high school levels (K-12), located in Ponce, Puerto Rico, attached to the Baptist Church and whose Pastor is the Rev. Dean L. Hendrix.

h. Maranatha Christian Academy, an educational institution at the preschool, elementary, junior high and high school levels (K-12), located in Fajardo, Puerto Rico, attached to the Maranatha Baptist Church and whose Pastor is the Rev. Gary Sprunger.

i. Fundamental Baptist Academy ("Academia Bautista Fundamental"), an educational institution at the elementary, junior high and high school levels (2-12), located in Hormigueros, Puerto Rico, attached to the Fundamental Baptist Church and whose Pastor is the Rev. Ariel Ramírez.

6. *These institutions are operating without a license and, therefore, outside the law, in open violation of Article II-14 of Law No. 49 of 30 June 1988, as amended. 18 L.P.R.A. 2124, and of Section 3.7 of the Regulation. See Annexes 10-18.*

7. On 1 August 1991 the State filed its Answer to the Complaint in the case at caption and filed an Appeal requesting an Order on Injunction against the educational institutions that were at that time operating without authorization.

8. On 11 June 1992 this Honorable Court held a Hearing on the Status of Proceedings and expressly provided that "In relation to the petition for injunction filed by the State, we will retain jurisdiction, provided always that the State acts immediately on the petition of the plaintiffs-schools." See Minutes of 11 June 1992.

9. This Honorable Court issued a Partial Judgment in regards to the Declaratory Judgment filed by the plaintiffs on 12 June 1992. A Reconsideration was filed and the same was DENIED through Resolution of 29 June 1992.

10. In this last Resolution the Court warns the plaintiffs that they must submit to the administrative proceedings for the GCE to determine whether it was proper to relieve them from the licensing process in

accordance with what was discussed at the hearing of 11 June 1992 and as is recorded in the Partial Judgment of 12 June 1992.

11. Then the plaintiff party on 28 June 1992, through a Writ on Appeal resorted to the Supreme Court of Puerto Rico, the case being stayed until 22 February 1994, date when the Supreme Court ruled that the State's regulating of private religious educational institutions does not constitute excessive intromission into religious matters. In practical terms, the Supreme Court resolved that the plaintiff schools must submit themselves to the licensing process provided by law and by regulation.

12. *All of the foregoing notwithstanding, the Plaintiff schools mentioned in the preceding paragraph five (5) have not wanted to submit themselves to the administrative Process for licensing and continue to operate without a license, and they have even published and held the enrollment process for school year 1994-1995.*

13. The herein appearing defendant party very respectfully prays that this Honorable Court GRANT the appeal about which it expressly reserved jurisdiction for itself so that the closure of the plaintiff educational institutions that are operating without the due license, as required by law, is ordered.

14. Because we are at the end of school year 1993-1994, it is very respectfully prayed, for reasons of equity, that the order on injunction allow the students to complete the current school semester. The requested order on injunction would have the effect of staying the operation of these educational institutions during the next semester and during the summer term, should they not submit themselves to the licens-

> ing process. An order to those effects would serve as an uncontroversial warning to the parents of the enrolled students and would allow them a reasonable period of time in which to make the pertinent enrollment efforts in any other educational institution, minimizing any damage to the children and to the teachers. (Emphasis added.)

Having also examined the Judgment issued in the Instant case last 12 June 1992, wherein we consigned as facts not in controversy because the plaintiff-Association had so accepted, "(1) that the aforesaid schools are operating private educational institutions at the primary and secondary levels without the license required by Law No. 68, *supra*, and (2) that they refuse to submit themselves to the administrative process conducive to their licensing,"

The plaintiff-appellee party, Association of Christian Academies and Schools of Puerto Rico, as well as the directors of the schools mentioned in the fifth paragraph of the motion filed by the State, are ordered to appear within a term of ten (10) days after being notified, to show cause (should they have any) wherefor this Court should not GRANT the State's appeal and issue a permanent writ on injunction ordering the immediate closure of the aforesaid schools and banning the operation of the same without the corresponding license. To their appearance they must attach a copy of the license to operate, in the event that their allegation is that they do possess the corresponding licenses to operate the schools."

The defendant [sic]-appellee party as of this date has not answered the foregoing order.

The State appeared again on 9 June 1994 to petition us to issue the writ on injunction whereby the plaintiff schools are

barred from continuing to operate without having been provided with the corresponding license. We resolve as we indicated in our order.

For the foregoing considerations, the appeal is GRANTED and a writ of permanent injunction is issued against the Association of Christian Academies and Schools of Puerto Rico, its officials and directors, as well as against all of the churches-schools that make up the same, to wit: Calvary Baptist Church of Yauco; Baptist School of Yauco; Church of Christ of Hormigueros, Inc.; Caribbean Christian Academy; First Baptist Church of Levittown, Inc.; Baptist School of Levittown; Light and Life Fundamentalist Baptist Church, Inc.; Bilingual Christian Academy; Missioner Baptist Church, Inc.; Ponce Baptist Academy; New Life Baptist Church, Inc.; Mayagüez Baptist Church; Fundamental Baptist Church, Inc.; Fundamental Baptist Academy Maranatha Baptist Church, Inc.; Maranatha Christian Academy; Evangelical Baptist Church of Fajardo; Fajardo Baptist Academy; International Baptist Church, Inc.; Baptist International Academy; Strong Castle Baptist Church; Strong Castle Academy; Biblical Baptist Church, Inc.; Christian Academy of the Southwest; and their respective school directors, to wit: Pastor Ricardo Pérez-Torres, Pastor Hernán Cortés-Serrano, Pastor William Haag-Domn, Pastor Glenn Foster-Lee, Pastor Gary Sprunger-Nassabaum, Pastor Ariel M. Ramírez-Malavé, Pastor Edgar Wayne Keeling-Jenkins, Pastor John Gidley-Rush, Pastor Dillard A. Morgan-Roper, Pastor David Vélez-Rivera; teachers, employees and in particular the following educational institutions: the Christian Academy of the Southwest directed by the Reverend Dillard A. Morgan; the Bilingual Christian Academy directed by the Reverend David Vélez; Caribbean Grace Academy directed by the Reverend Joseph Cerra; Baptist School of Levittown directed by Mr. Hernán Cortés; Baptist Academy of Mayagüez directed by the Reverend Wayne Keeling; Strong Castle Academy directed by Mr. Norberto Nazario; Ponce Baptist Academy directed by the

Reverend Dean L. Hendrix; Maranatha Christian Academy directed by the Reverend Gary Sprunger; Fundamental Baptist Academy directed by the Reverend Ariel Ramírez, as well as against any other person acting in common accord with the foregoing entities and directors and all are ordered to abstain from operating the aforesaid schools as of this running summer and the next school semester that begins in August or September, 1994-95, and as long as they do not submit themselves to the licensing process and they are granted a license by the General Council on Education of the Commonwealth of Puerto Rico for them to be able to operate said educational institutions.

They are all hereby warned that failure to comply with this judgment on permanent injunction will be grounds for them to be found guilty of criminal contempt. In addition, the Court may decree other remedies under its inherent power to enforce its orders and judgments.

ENTER AND NOTIFY.

Given in San Juan, Puerto Rico, on 10 June 1994.

/Sgd/
Arnaldo Lopez-Rodriguez
Superior Court Judge

I Certify:
Paulita Santiago-CartagEna
General Clerk

By:/Sgd/N. E. Rodz.
Deputy Clerk

— CERTIFIED —

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

POSITION OF THE GENERAL COUNCIL ON EDUCATION IN REGARDS TO THE CIVIL ACTION ASSOCIATION OF CHRISTIAN ACADEMIES AND SCHOOLS OF PUERTO RICO (ACASPR) V. COMMONWEALTH OF PUERTO RICO (COPR)

The State has the responsibility and the right to watch over the education of its citizens. In accordance with its power, legislation has been approved establishing rules for the operation of public and private educational institutions in Puerto Rico. The State, through the General Council on Education, exercises its duty to guarantee the minimum requirements for the educational services offered at the levels under its jurisdiction to be offered within a school environment that facilitates teaching as well as learning by the students.

Law No. 68 of 28 August 1990 establishes the requirement of an authorization license for all institutions that operate in Puerto Rico. The Law provides that the granting of licenses will be in accordance with Law 31 of 1966, amended by Law 49 of 1988. These laws oversee the operation of private schools in Puerto Rico. Law 49 establishes the standards and requirements that must be complied with by all private schools that operate or are planning to operate in Puerto Rico (18 LPRA 2113). The Application for License, according to this law, must be accompanied by the necessary evidence that shows that there is compliance with the following:

1. Use Permit for the Physical Plant issued by the corresponding government agency.
2. The institution's teaching staff must possess the necessary educational preparation and experience. This will be evidenced by the following criteria: (a) that they possess the corresponding teacher's certificate issued by the Secretary of the Department of Education; (b) that in each educational institution and in harmony with the human resources available in Puerto

Rico, the applicant institution show that the proposed teaching staff possesses the necessary academic degree or the qualifying professional experience, compatible with the prevailing practices and standards in the academic community for the type of applicant institution, in which case the Secretary is hereby empowered to issue a provisional teacher's certificate; and (c) that they hold a master's or doctor's degree in the corresponding academic area, in which case the Secretary is also hereby empowered to issue a provisional teacher's certificate.

3. To have facilities, equipment, library and laboratory services in such proportion as is compatible with the objectives and nature of the applicant education institution.

4. The existence of an educational plan or academic program and the forms and manners in which said plan is proposed to be implemented.

5. To have the corresponding permits from the government agencies in relation to the protection of the health and safety of the students.

6. A financial feasibility study that shows that the school can comply reasonably with the commitments that it will contract with respect to all components of the institution, or in the alternative, post before the Secretary a performance bond with an effectiveness of no less than one (1) year, issued by an insurer authorized to do business in Puerto Rico. Said bond must be renewed annually and it will be the obligation of the applicant institution to keep it in force at all times and to submit evidence of its effectiveness and renewal at least thirty (30) days prior to the expiration of its effectiveness.

7. Copy of the institutional regulation in regards to: academic affairs, student affairs, administrative affairs and fiscal matters.

8. Information about the institution's administrative direction, its Board of Directors, its chief executive and other officials, as well as the type of organization.

In harmony with the applicable laws currently in force, the General Council on Education approved the Regulation for the Granting of Licenses, which became effective on 30 April 1992.

By reason of the allegations presented before the Supreme Court of Puerto Rico by the legal counsel for the ACASPR, a more detailed investigation has been conducted about the State's power to establish rules to oversee private and parochial or religious educational institutions. The General Council on Education, in the exercise of its powers and duties, can validly regulate the operation of private educational institutions, to include those of a religious nature that call themselves churches-schools.

The mere allegation by these churches-schools of violation of their constitutional right to practice religion and of the separation between Church and State is not sufficient to evade compliance with the laws and regulations approved by the State.

The educational philosophy, of a humanistic or another nature, that Law 68 promotes is applicable to public schools, not to private schools which are at liberty to adopt the one that best fits their particular mission. The Council examines the educational philosophy that the school itself formulates and verifies that the curriculum proposed by the institution is congruent with the same.

The Regulation for the Granting of Licenses approved by the General Council on Education contains provisions of individual applicability to public schools and others to private schools. Chapter 3 of the Regulation contains the provisions

applicable to private educational institutions and Chapter 2 is applicable to public institutions.

The Regulation for the Granting of Licenses establishes minimum requirements that must be complied with by all educational institutions in the Island. Nevertheless, in them the practice of religion is neither inhibited nor promoted with the requirements established by the Regulation.

The Supreme Court of Puerto Rico has established that constitutional rights are not absolute and on occasion may be subordinate when public needs so require, *DACO v. Community*, 92 JTS 81.

Article II, Section 3 of the Constitution of the Commonwealth of Puerto Rico provides:

> No law whatsoever will be enacted regarding the establishment of any religion nor will the free exercise of a religious cult be forbidden. There will be complete separation of the Church and the State.

The Supreme Court of Puerto Rico in *Agostini-Pascual v. Catholic Church*, 109 DPR 172 (1979) held as to a challenged ecclesiastic action that if an absolutist interpretation of the clause on separation of Church and State is adopted, the answer is evident, but we have already pointed out that such interpretation is inaccurate. The zones of action of these two powers are usually intermixed. Many acts of the State can have repercussions in the other zone, but this does not entail their nullity if they are justified in secular terms.

The First Amendment to the Constitution of the United States provides:

> Congress shall make no law regarding the establishment of any religion nor forbidding the free exercise of religious worship; nor restricting freedom of expression, of the press or the right to meet in peaceful

assembly and to petition from Government the redress of grievances.

The Supreme Court of the United States in *Lemon v. Kurtzman*, 403 US 602 (1971) held that in consideration of the religious clause of the First Amendment to the Constitution, in order to sustain the validity of a law the following analysis must be done: (1) the statute must have a secular purpose; (2) its main or primary effect must neither inhibit nor promote religion; and (3) the statute must not become excessively involved with religion.

The State's compelling interest in guaranteeing adequate "minimum" requirements in education has been recognized. "On occasion, the State's interest overcomes the alleged violations of the practice of religion."[1]

The Court must do a balance of interests. On the one hand, the State's interest in an adequate education for the citizens and, on the other hand, the interest of the churches-schools in practicing their belief free of the State's regulations.

Hereinbelow we summarize jurisprudence of state courts of the United States, wherein the constitutional validity of legislation and regulations applicable to privte parochial schools has been sustained.

In *Meverkorth v. State*, 115 NW2d 585 (1962), the Court held that statutes that established compulsory attendance at schools, the certification of teachers and the operation and supervision of parochial schools did not constitute a violation or prohibition of the free exercise of religion nor an act not contemplated in the State's power.

The Court understood that the statutes at issue established the standards for an adequate education and allowed churches and private schools to establish schools based on those stand-

[1] William D. Valente, *Education Law: Public and Private* (St. Paul: West Publishing Co., 1985), page 346.

ards. Private and religious schools were part of the State's educational system. The Court held, in its turn, that the right to practice religion was not present in this case because the State was not denying the right to practice their beliefs. The State's interest was limited to requiring credentials of teachers qualified to teach in that institution.

In *State ex rel. Douglas v. Faith Baptist Church*, 301 NW2d __1 (1981), the Court held that the regulations of the State Department of Education that established what the curriculum must contain, the necessary materials and equipment and teacher's certificates for the corresponding grade did not violate parents' rights guaranteed by the First or the Ninth Amendments to the Constitution of the United States.

The Court also held that the State had a compelling interest to know the skills and qualifications of the persons who teach. The curriculum requirements were minimal; only the teaching of certain subjects was required, but the manner in which the teaching was to be conducted was not imposed.

In *Fellow Baptist Church v. Benton*, 620 F.Supp. 308 (1985), the Court held that the application of a law and its regulation to a private educational institution and the requirement to submit reports on compulsory attendance to the schools of children of ages seven to fifteen was not a burden that violated the constitutional right of baptist churches-schools to practice religion nor was it applicable that the State was becoming excessively involved with these churches. The churches-schools merely submitted the attendance report of the students. The State, on its part, did not exercise power or control over the administration of the school nor any other activity of the church. Although the requirement of teachers' certificates affected their right to practice their beliefs, because it violated their principle of faith in relation to the supremacy of God and the separation of Church and State, it was not constitutionally unallowable

because of the State's compelling interest in overseeing education.

Johnson v. Charles City Community Schools Board, 368 NW2d __4, establishes that churches-schools will not be exempt from the requirement established by the state regulation as to hiring teachers with the corresponding certificate, unless different educational needs are shown on the part of the students that attend these churches-schools.

In *New Jersey State Board of Higher Education v. Board of Directors of Shelton College*, 448 A2d 988 (1992), the Court held that application to a sectarian school of the state legislation that prohibited the granting of bachelors' degrees by institutions that did not have a license did not violate rights protected by the First Amendment to the Constitution. Although a burden was being imposed on the exercise of their faith, the State had a substantial interest in overseeing certain minimum standards in education. The uniform application of the licensing requirement was essential in order to achieve compliance with the State's interest. This did not entail an excessive intervention in the school's religious affairs.

New Life Baptist Church Academy v. Town of East Longmeadow, 885 F2d 940 (1989), establishes that a law of the State (Massachusetts) can validly require an authorization license from a religious school. The license entailed that the school's academic curriculum underwent and evaluation process. The Court of Appeals sustained that the clause on freedom or worship does not prevent that approval of the academic curriculum through the appropriate mechanisms be required from a religious school. Although a burden is imposed on the exercise of religion with the requirement to obtain a license, the State has a compelling interest in that education be adequate.

There is no doubt about the State's power to impose reasonable requirements for the control and duration of education, *Wisconsin v. Yoder*, 406 US __3 (1973).

Education is perhaps the most important function of states and municipalities, *Brown v. Board of Education*, 347 US 483, 493 (1954).

Education is distinguished from other State programs because of the impact that it causes on a child's life, as well as by the important task that it performs in the maintenance of the basic institutions of our society, *Blackwelder v. Safuaver*, 689 F.Supp. 106 (1988).

It has been established as a matter of law that the State has a compelling interest in guaranteeing an adequate education for its citizens, *Murphy v. Arkansas*, 852 F2d 1039, 1042 (1988).

When an activity of the State constitutes a "sufficient burden" on the free exercise of religion, the balance of interests requires that it be determined whether the State has a substantial interest in a specific activity to which less restrictive measures can not be applied to comply with the public end being sought, *Blackwelder v. Safuaver, supra*, p. 128.

When the State imposes a burden on the right to practice religion, it has to show that it is the less restrictive manner to achieve the interest being sought, *Thomas v. Review Board of the Indiana Employment Security Division*, 450 US 707, 718 (1981).

The General Council on Education understands that both Law 49 and the Council's Regulation for the Granting of Licenses are valid. Certain minimum requirements are imposed on the religious educational institutions of the Island. However, it does not make it a requirement to teach certain subjects that are not in the expressed mission of the educational institution, wherefore they can not allege controlled direction of education. Education of the citizens is imbued with public interest and entails that for the attainment of the State's objectives they must comply with requirements of a secular nature.

As our Supreme Court held in *Successors of Victoria Capella v. Pentecost Church of God*, 102 DPR 20 (1974):

> No one can subtract his acts and conduct from the rules that through legislation have been established by society for the protection of peace, morality and public order. Religious practice does not create a separate province where the Government is barred from enforcing the laws. (*Reynolds v. United States*, 98 U.S. 145 (1878) 25 L.Ed. 244). Otherwise, under the veil of religious immunity and with the unrestricted constitutional freedom to worship the Creator inside and outside recognized churches, practices could be developed that because they have general disapproval are defined as crimes with punitive sanctions in the penal laws. In sum, freedom of religion as written in the Constitution is the patrimony of rational beings and man's unalienable right to fulfill what he believes is his obligation of conscience before the mystery of life, but it is not a license to create a separate, untouchable and autocratic world capable of altering with impunity the sensitive balances of the harmonic whole which is political society.

The Regulation for the Granting of Licenses does not set forth rules about the mission of the school or its philosophical orientation. Nor in regards to the contents of the curriculum nor the educational methodology. Nevertheless, it does require that the academic component of the institution respond to its mission. It also demands conditions that guarantee its safety, health, adequacy of the physical installations and teaching personnel with a Certificate issued by the Secretary of Education.

In order to sound out the possible interference with the religious beliefs of these educational institutions in the application of the Regulation for the Granting of Licenses, the Executive Committee of the General Council on Education conducted

a survey of educational institutions of a religious denomination to which an authorization license has been issued during the period of the survey.

Of the 32 questionnaires that were sent out, 19 were answered. As to the possible interference of the Regulation for the Granting of Licenses with freedom of religion, thirteen educational institutions indicated that it does not interfere with their philosophical or religious freedom and six left this item blank.

Because of all of the foregoing, we understand that neither the Law nor the Regulation violate the constitutional right of these churches-schools to practice their religious beliefs, nor the doctrine of separation of Church and State.

In the absence of an excessive intromission in the affairs of these churches-schools in relation to their missions and objectives, curriculum, teaching methods and techniques and administration in general, the validity of the law and the approved regulation must be sustained. Private religious educational institutions must be subject to the State's regulations. To refuse to comply with the law is the uneducating act *par excellence*. The biblical text states that Christ ruled that there are things of God and things of the State (Caesar). The attitude of rebelliousness disregards the Christian mandate and is a deplorable attitude that utilizes religion as the measure opposed to the State when both can and must exist coexist in harmony, the State being the link of union among all believers and also with non-believers. The State also covers them all. The different sects and the non-sectarians have in God and the State the common roof that enables them all to live together in peace and harmony. None of them may validly, either from the secular or the religious standpoint, become an instrument for disunion. The difference of criteria as to the manner of worshipping God is not and can not be allowed to become a dissociating element

because protecting freedom of religion is part of the State's function.

The State exists to obtain the well-being of its constituents. It is also the arbitrator that safeguards the rights of all, including the minorities that do not reach power in the government. Its ends are also of affirmative action, such as propitiating the best preparation of its citizens for life in the community, peaceful coexistence, economic well-being and personal development. For this, education is the instrument of excellence, wherefore every member of the community must be guaranteed the minimum conditions established by Law 49, indispensable for the same to be feasible.

The missions and curriculums of each school may be different, but there are certain minimal secular requirements that must be complied with in order to guarantee the best possible education. In this manner the interests of parents, students and the community in general in obtaining an adequate education are protected.

This document was approved by the General Council on Education in its meeting held on 20 November 1992 and it was agreed to forward the same to the Solicitor General of the Commonwealth of Puerto Rico.

CERTIFIED CORRECT,

/Sgd/Guillermo Irizarry Rubio
Guillermo Irizarry-Rubio
Chairman

((The initials G.I.R. appear at the left-hand margin of every page.))

—CERTIFIED—

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U.S. Certified Interpreter
(PL 95-539, 28 USC 1827)
232 Upscala, College Park
San Juan, PR 00921
(809) 751-8334